

Exhibit A

**In re Number Holdings, Inc., Case No. 24-10719 (JKS)
(Bankr. D. Del. 2024), 5/23/2024 Hr'g Tr., Docket No. 734**

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
NUMBER HOLDINGS, INC., . Case No. 24-10719 (JKS)
et al., . (Jointly Administered)
. .
. Courtroom No. 3
. 824 North Market Street
. Wilmington, Delaware 19801
Debtors. .
. Thursday, May 23, 2024
. 10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: Andrew Leblanc, Esquire
MILBANK LLP
1850 K Street, NW
Suite 1100
Washington, DC 20006

Brian Kinney, Esquire
MILBANK LLP
55 Hudson Yards
New York, New York 10001

(APPEARANCES CONTINUED)

Audio Operator: Madaline Dungey, ECRO

Transcription Company: Reliable
The Nemours Building
1007 N. Orange Street, Suite 110
Wilmington, Delaware 19801
Telephone: (302)654-8080
Email: gmatthews@reliable-co.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 APPEARANCES (CONTINUED) :

2 For the U.S. Trustee: Rosa Sierra-Fox, Esquire
 3 OFFICE OF THE UNITED STATES TRUSTEE
 4 844 King Street, Suite 2207
 Lockbox 35
 Wilmington, Delaware 19801

5 For Ollie's Bargain
 6 Outlet: Josef Mintz, Esquire
 BLANK ROME LLP
 7 1201 North Market Street
 Suite 800
 8 Wilmington, Delaware 19801

9 John Lucian, Esquire
 10 BLANK ROME LLP
 One Logan Square
 11 130 North 18th Street
 Philadelphia, Pennsylvania 19103

12 For Landlords: Laurel D. Roglen, Esquire
 13 BALLARD SPAHR LLP
 919 North Market Street
 14 11th Floor
 Wilmington, Delaware 19801

15 Ivan Gold, Esquire
 16 ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP
 17 TCW Tower
 865 S Figuero Street
 Suite 2800
 18 Los Angeles, California 90017

19 For Red Hill Village: Aaron Applebaum, Esquire
 20 DLA PIPER LLP (US)
 1201 North Market Street
 Suite 2100
 21 Wilmington, Delaware 19801

22 For Mira Mesa
 Shopping Center West
 23 LLC: William Hazeltine, Esquire
 SULLIVAN HAZELTINE ALLINSON LLC
 24 919 North Market Street
 Wilmington, Delaware 19801

25

1 APPEARANCES (CONTINUED):

2 For the Committee: Steven Golden, Esquire
 3 PACHULSKI STANG ZIEHL & JONES LLP
 4 780 Third Avenue
 34th Floor
 New York, New York 10017

5 For KRG Houston New
 6 Forest, LLC: Lucian Murley, Esquire
 SAUL EWING LLP
 7 1201 North Market Street
 Suite 2300
 8 Wilmington, Delaware 19801

9 For Oracle Limberlost
 Shopping Center, LLC: Benjamin Keenan, Esquire
 10 ASHBY & GEDDES, P.A.
 500 Delaware Avenue
 8th Floor
 11 Wilmington, Delaware 19801

12 For Burlington: Matthew Ward, Esquire
 13 WOMBLE BOND DICKINSON (US) LLP
 1313 North Market Street
 Suite 1200
 14 Wilmington, Delaware 19801

15 For ALDI, Inc.: James Rossow, Jr., Esquire
 16 RUBIN & LEVIN, P.C.
 135 North Pennsylvania Street
 Suite 1400
 17 Indianapolis, Indiana 46204

18 For Kimco: Rachel Mersky, Esquire
 19 MONZACK MERSKY & BROWDER, P.A.
 1201 North Orange Street
 Suite 400
 20 Wilmington, Delaware 19801

21 For Unexpired Lease
 Counterparty: Alexandra Thomas, Esquire
 22 CHOATE, HALL & STEWART LLP
 Two International Place
 23 Boston, Massachusetts 02110

24

25

APPEARANCES (CONTINUED):

For American National
Insurance Company:

Simon Fraser, Esquire
COZEN O'CONNOR
1201 North Market Street
Suite 1001
Wilmington, Delaware 19801

Marc Young, Esquire
GREER, HERZ & ADAMS, LLP
One Moody Plaza
18th Floor
Galveston, Texas 77550

For CSIM/Franklin
Family Partnership:

Paige Topper, Esquire
SAUL EWING LLP
1201 North Market Street
Suite 2300
Wilmington, Delaware 19801

For the DIP Lender:

Megan Volin, Esquire
PROSKAUER ROSE LLP
Eleven Times Square
Eighth Avenue & 41st Street
New York, New York 10036

For Navins Fund:

Jeffrey Waxman, Esquire
MORRIS JAMES LLP
500 Delaware Avenue
Suite 1500
Wilmington, Delaware 19801

INDEXMOTIONS:PAGE

Agenda

Item 5: Debtors' Motion for Entry of an Order Approving (I) (A) Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Remaining Assets, (B) Assumption and Assignment Procedures, (C) Form and Manner of Notice of Sale Hearing, Assumption Procedures, and Auction Results; (II) Auction and Sale Hearing Dates; (III) (A) Debtors' Entry into One or Multiple Asset Purchase Agreements, (B) Sales(s) Free and Clear of All Encumbrances, and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief (D.I. 171, filed 4/16/24)	6
---	---

Court's Ruling:

104

EXAMINATION:PAGEWILLIAM SCOTT WEBB

Direct examination by Mr. Young	32
Cross-examination by Mr. Lucian	47
Redirect examination by Mr. Young	58

DECLARATIONS:PAGE

1) Matt Tabloff	11
2) Paul Shin	12

EXHIBITS:PAGE

American National - Exhibits 1 through 3	32
--	----

1 (Proceedings commenced at 10:09 a.m.)

2 THE COURTROOM DEPUTY: All rise.

3 THE COURT: Good morning. Please be seated.

4 This is Judge Stickles. We are on the record in
5 Number Holdings, Case No. 24-10719.

6 I will hear from debtors' counsel.

7 MR. LEBLANC: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. LEBLANC: Andrew Leblanc of Milbank on behalf
10 of 99 Cents and its affiliated debtors-in-possession.

11 Your Honor, today marks the culmination of the
12 efforts of the company and its advisors that began well
13 before the petition date. On April 16th 99 Cents filed a bid
14 procedures and sale motion seeking approval of the bidding
15 procedures for the sale of substantially all of the company's
16 assets that were not being sold pursuant to the store closing
17 procedures previously authorized by Your Honor.

18 On May 9th the Court entered the bidding
19 procedures order at Docket No. 463. Pursuant to the process
20 set forth in the bidding procedures, 99 Cents received 150
21 indications of interest for various portions of the assets
22 which included 44 owned properties, hundreds of leases and
23 the company's intellectual property.

24 We subsequently received over 75 bids for the
25 assets. One of those bids, Your Honor, was the stalking

1 horse bid of Ollie's, which Your Honor approved our
2 designation of Ollie's as the stalking horse bidder on May
3 15th, that docket entry was at No. 562. The company and its
4 advisors conducted an auction on May 21st. The auction was
5 entirely done virtually with the first portions taking place
6 on Hilco's online platform and then the process concluding in
7 a Zoom environment.

8 The company and its advisors worked closely with
9 the advisors to our consultation parties to evaluate the bids
10 that were received and determine the highest and best bid for
11 each asset. The end result is the process that are the
12 proposed sales for which we are seeking approval today, Your
13 Honor, which in the aggregate represent over \$170 million of
14 value to the company.

15 So, Your Honor, we are here today seeking approval
16 of that sale and that is the purpose for the hearing. We
17 submitted an agenda and I think, Your Honor, there is some
18 contested issues and we will take that in the order in a
19 moment, but that is the purpose for which we are here today
20 simply to get approval that sale order. As I mentioned, our
21 view is that this was a very successful auction. We raised,
22 as I said, \$170 million which compares very favorably to the
23 initial indications of interest and --

24 THE COURT: What is the breakdown of the \$170
25 million for the multiple sales? You have four transactions,

1 proposed transactions, what is the breakdown?

2 MR. LEBLANC: Your Honor, I know -- I am not sure
3 that I have the breakdown for each of them, but one of my
4 colleagues may be able to give that to me. I know that the
5 Ollie's one is the stalking horse bid, the \$14.6 million.

6 THE COURT: I know those two. I was curious the
7 breakdown for the multiple -- not Ollie's, not the
8 designation. The other two, what is the breakdown?

9 MR. LEBLANC: Your Honor, there is -- I think
10 there's 44 different purchasers; supporting two, minus
11 Ollie's and the Dollar Tree acquisition. So, 42 different
12 purchasers, but I am looking at my colleagues to get that for
13 you.

14 (Pause)

15 MR. LEBLANC: I apologize for the delay, Your
16 Honor. So, the Dollar Tree designation rights constitute \$13
17 million; that is one of the two that Your Honor said you were
18 familiar with. The 21 lease assignments that are not part of
19 the stalking horse bid constitute \$2,464,863. The Ollie's
20 stalking horse bid is \$14.6 million. Then the sale of the 41
21 owned properties is \$137,334,320.

22 THE COURT: Thank you.

23 MR. LEBLANC: So, Your Honor, those are the sales,
24 obviously, that occurred on the auction date. We had the
25 prior transactions that Your Honor had approved in connection

1 with the Dollar Tree designation rights and the grocery
2 outlet April leases were an additional \$2.75 million which
3 brings the grand total in the sales process, not just from
4 the auction, to just over \$170 million in the aggregate.

5 One note, Your Honor, as contemplated by the
6 bidding procedures with respect to all transactions involving
7 leases other than the stalking horse bid, resolution of cure
8 objections and the filing resolution of adequate assurance
9 information will occur after this hearing. We will bring any
10 unresolved issues and we will work to resolve them all, Your
11 Honor, but any unresolved issues we will bring back to Your
12 Honor and have provided that we might not close those lease
13 assignments until those issues are resolved. So, that is not
14 a today issue.

15 THE COURT: That is June 4th, correct?

16 MR. LEBLANC: Yes, Your Honor. Exactly.

17 Your Honor, what I would propose to do is there
18 are four different forms of order. What I propose to do is
19 offer our evidence in connection with the proceedings and
20 then I will yield the podium to Mr. Kinney who is going to
21 handle the first of the forms of order, the Dollar Tree one,
22 so we can resolve that and get them on their way. Then we
23 will turn to the one with respect to the Ollie's lease
24 assignment and American National.

25 THE COURT: Is that the only pending objection

1 today?

2 MR. LEBLANC: The only pending objection today,
3 Your Honor, I think -- my colleagues will go over the forms
4 of order. There is the American National one and then Mr.
5 Kinney is going to raise -- there is a landlord.

6 MR. KINNEY: Yes, Your Honor. We're also have
7 received an informal -- sorry, Brian Kinney from Milbank. We
8 also received an informal objection from one of our
9 landlords. We believe that is still live. So, that will be
10 heard in connection with the proposed form of relief sale
11 order.

12 THE COURT: Okay.

13 MR. LEBLANC: Your Honor, we have two declarations
14 that we filed on the docket. The first is a declaration by
15 Matt Tabloff in support of the debtors' motion. That was
16 filed at Docket No. 669.

17 THE COURT: That is in support of designation
18 rights only, is that correct?

19 MR. LEBLANC: That is -- I believe that is
20 correct, Your Honor.

21 THE COURT: Okay.

22 MR. LEBLANC: Yes, Your Honor. That is just in
23 connection with the (indiscernible). So, Your Honor, we
24 would offer that declaration as Mr. Tabloff's direct
25 testimony and he's available for cross-examination if anyone

1 wishes.

2 THE COURT: Does anyone object to the admission
3 into evidence of the Tabloff declaration at Docket 669 in
4 support of sale of the designation rights?

5 (No verbal response)

6 THE COURT: Okay. I hear no one. I see no hands
7 on Zoom.

8 Does anybody wish to cross-examine the declarant
9 regarding the content of his declaration?

10 (No verbal response)

11 THE COURT: I hear no one. I see no hands on Zoom.
12 The declaration is admitted uncontroverted.

13 (Tabloff declaration received into evidence)

14 MR. LEBLANC: Thank you, Your Honor.

15 The next declaration is Exhibit No. 671 and this
16 is the declaration of Paul Shin, of Jefferies, in connection
17 with the remainder of the sales, Your Honor. Mr. Shin is
18 available for cross-examination. He is here in the courtroom.
19 We would offer Document No. 671 as Mr. Shin's direct
20 testimony in this case.

21 THE COURT: Does anyone object to entry into
22 evidence of the Shin declaration at Docket 671 in support of
23 multiple asset purchase agreements?

24 (No verbal response)

25 THE COURT: I hear no one. I see no hands on Zoom.

1 Does anyone wish to cross-examine the declarant
2 regarding the content of his declaration?

3 (No verbal response)

4 THE COURT: Okay. Hearing no one or seeing no
5 hands on Zoom, that declaration is admitted uncontroverted.

6 (Shin declaration received into evidence)

7 MR. LEBLANC: That concludes our evidentiary
8 presentation, Your Honor. What I would propose to do is we
9 were going to -- if it would please the Court, we would
10 handle the Dollar Tree order first and then we will turn next
11 to the --

12 THE COURT: Before we get there, I just want to
13 confirm that some of these orders were just filed and, in
14 fact, one of them I was handed before I came on the bench. I
15 haven't even looked at it yet, a blackline. I just want to
16 make sure that parties in interest have had an opportunity to
17 review these orders.

18 MR. LEBLANC: We believe they have, Your Honor.
19 We have been coordinating with the parties throughout. I know
20 just as we walked in the courtroom there is, what I believe
21 to be, knits that were raised to us. So, I have no doubt
22 that there will be some changes. When we talk about the
23 Ollie's transaction, Your Honor, we are going to work
24 subsequent to -- assuming Your Honor enters an order --
25 agrees to enter the order, we are going to separate out the

1 Ollie's transaction with respect to the one piece of property
2 -- the one lease that is objected to, we are going to treat
3 that in a separate order and then have the other seven leases
4 and three owned properties that Ollie's is transacting for
5 treated in one order. It won't require a separate APA. We
6 just want to have a clean separation between those.

7 THE COURT: Understood.

8 MR. LEBLANC: So, we will do that subsequent to
9 the proceeding and we will do it under certification of
10 counsel and submit that to the Court. We have been trying to
11 keep everybody updated, Your Honor, and, obviously, if people
12 have comments we are happy to take them and then provide it
13 to Your Honor under certificate of counsel at some point
14 subsequent to today.

15 THE COURT: I think Ms. Sierra-Fox wants to be
16 heard.

17 MS. SIERRA-FOX: Yes, Your Honor. May I be heard?

18 THE COURT: Yes, please.

19 MS. SIERRA-FOX: Your Honor, I did -- on behalf of
20 the U.S. Trustee Rosa Sierra-Fox. I did begin reviewing the
21 orders and in particular started with the Dollar Tree order
22 yesterday afternoon. I am still working through the orders on
23 behalf of the U.S. Trustee. So, throughout the hearing I
24 will be -- I have a couple of comments.

25 THE COURT: I have comments too and certainly feel

1 free to raise any issues you have as we work through them or
2 if we need to take a break for someone to look at an order we
3 will.

4 MS. SIERRA-FOX: Yes, Your Honor. Thank you.

5 THE COURT: Mr. Kinney.

6 MR. KINNEY: Thank you, Your Honor. For the
7 record Brian Kinney of Milbank on behalf of 99 Cents and its
8 affiliated debtors.

9 Your Honor, yesterday we filed at Docket No. 663 a
10 proposed order including the purchase agreement amongst
11 debtors and buyer authorizing the sale of designation rights,
12 determining leases free and clear of liens, claims, and
13 encumbrances, and approving assignment and assumption
14 procedures of the designated leases and granting related
15 relief.

16 Your Honor, this is the Dollar Tree order that we
17 have been referring to. Your Honor, in connection with the
18 sale process, prior to the auction, the debtors received a
19 bid from Dollar Tree as evidenced in Mr. Tabloff's
20 declaration. In consultation with our consultation parties -
21 -- in extensive consultation with our consultation parties
22 the debtors determined that the proposal which Dollar Tree
23 made was an extremely beneficial offer to the estates. The
24 debtors commenced the process, basically, to value check that
25 proposal.

1 Your Honor, the Dollar Tree proposal provides for
2 the purchase of designation rights for 112 of our lease
3 locations and the consideration for that as well as for the
4 debtors' intellectual property is \$13 million. There is an
5 agreement also to purchase the fixtures, furniture and
6 equipment related to those locations for an amount in excess
7 of \$1.7 million.

8 THE COURT: Is that the debtors' FF&E?

9 MR. KINNEY: It is, Your Honor. It is the
10 debtors' FF&E. There is no landlord FF&E. That is the
11 debtors.

12 THE COURT: Or no third-party FF&E?

13 MR. KINNEY: It's not third-party FF&E. We
14 returned the third-party FF&E the debtors are in possession
15 of and the (indiscernible) in those stores.

16 UNIDENTIFIED SPEAKER: Your Honor, may I ask
17 counsel to speak into the mic. We can't hear him back here.
18 Sorry to interrupt.

19 MR. KINNEY: Is this better? First time I have
20 ever been told that I was inaudible.

21 THE COURT: Actually, no offense, I don't think
22 its you. I think it's the vent above their heads back there
23 that makes it very difficult to hear. I have one behind me
24 too, so, yes. Give me a thumb's up if you can't hear him.

25 MR. KINNEY: Your Honor, the Dollar Tree proposal

1 also included an additional benefit to the estate. It
2 included an agreement to pay June rent for the locations and
3 it also provided that if fewer than 95 of the locations were,
4 in fact, designated for assumption additional payment of
5 \$25,000 per location to the debtors.

6 This bid, however, was conditioned on the debtors
7 designating them the successful bidder prior to the auction
8 and removing the assets from the auction. The debtors
9 commenced an extensive process of reaching out to all parties
10 that have expressed an interest in those lease locations
11 prior to as part of the process to see if they were willing
12 to increase their bids. The net result of that, Your Honor,
13 is that while we did get some interest to increase those
14 bids, which (indiscernible) for all the individual bids still
15 paled in comparison with what Dollar Tree was offering on
16 this designation rights bid.

17 THE COURT: And that was in consultation with your
18 consultation parties?

19 MR. KINNEY: It was, Your Honor. There was
20 extensive consultation with both the committee and with our
21 DIP lenders. So, after those discussions we determined
22 Dollar Tree the successful bidder for those assets, removed
23 them from the auction, and we are here today to proceed with
24 an order approving those designation rights.

25 As Your Honor may remember, we had entered a

1 designation rights order with respect to a set of our April
2 leases in Dollar Tree earlier in this process and the order
3 that we filed is redlined against that earlier order. So,
4 the order that we have at 663 also attached a redline of the
5 initial Dollar Tree designation rights order for the ease of
6 the parties. They kept largely to that same form.
7 Obviously, there was some amendments to not only reflect the
8 passage of time, but also the inclusion of the intellectual
9 property at this time and the specifics of the bid.
10 Otherwise, we kept to the earlier form.

11 Your Honor, as Ms. Sierra-Fox noted, she has
12 provided informal comments. They are not reflected in the
13 form of order that we submitted.

14 THE COURT: I just want to make sure I'm on the
15 right page. The latest order is 663, correct?

16 MR. KINNEY: Correct.

17 THE COURT: Okay.

18 MR. KINNEY: 6631 is the current order, 6632 was
19 the blackline.

20 THE COURT: The blackline which is what I was
21 working off of.

22 MR. KINNEY: We are working to incorporate Ms.
23 Sierra-Fox's comments and we will, under COC after the
24 hearing, submit a blackline reflecting those changes that we
25 have agreed to with the Office of the United States Trustee.

1 THE COURT: Okay. Let me ask: Does anyone want to
2 be heard with respect to the proposed sale or Docket No. 663,
3 the proposed order?

4 MR. GOLDEN: Good morning, Your Honor. Steve
5 Golden of Pachulski Stang Ziehl & Jones, proposed counsel to
6 the committee.

7 I just wanted to confirm further to Your Honor's
8 question that we were consulted as part of this and we agree
9 and think it's a good result of the estate.

10 Thank you, Your Honor.

11 THE COURT: Thank you. I appreciate your comment.

12 MR. KEENAN: Good morning, Your Honor. May I
13 please the Court Ben Keenan, Ashby & Geddes, for Oracle
14 Limberlost Shopping Center LLC, which is a landlord with
15 leases subject to the proposed order at 663.

16 The proposed order was filed under -- the notice
17 of successful bidder was filed at No. 638. I just wanted to
18 make a clarification, Your Honor and just explain to the
19 Court the issue I have. In reviewing this last night and this
20 morning the proposed sale order is pursuant to the general
21 sale procedures under (indiscernible) entered at 463, but it
22 also references the designation rights. Those are two
23 separate tracks and that is what gave me a concern.

24 THE COURT: Understood.

25 MR. KEENAN: I did have a chance to thank debtors'

1 counsel and Dollar Tree's counsel was kind enough to explain
2 this before the hearing. I think just filing an amended
3 clarification to --

4 THE COURT: Where are you referring to
5 specifically?

6 MR. KEENAN: What the different procedures are?

7 THE COURT: No. I understand the different
8 procedures. I actually see them as two bifurcated events.
9 So, I guess I am asking more specifically what is your
10 concern vis-à-vis the order.

11 MR. KEENAN: What I have done is I will tell you
12 my understanding and Dollar Tree's counsel can correct me if
13 I'm wrong. Dollar Tree is under the -- under this proposed
14 sale order is purchasing a new set of designation rights for
15 these (indiscernible) Oracle. Its similar, but its not
16 identical. That is why I wanted (indiscernible) procedures
17 for the designation right period.

18 Dollar Tree will have a chance to inform the
19 debtors of leases they wish to potentially assume and assign.
20 Notice will be issued. Counterparties will have a chance to
21 respond just as they have under the existing designation
22 rights procedures. Dollar Tree's counsel explained to me
23 that one section of that is the core objection deadline,
24 which ran on May 14th, will continue to uphold. So, other
25 than that the --

1 THE COURT: Okay. What does that mean?

2 MR. KEENAN: That means there -- that under the
3 sale procedures, under Docket 463, there is what's called a
4 contract objection deadline which is, essentially, a cure
5 objection deadline that was on May 14th. That will continue
6 to hold and parties that didn't respond before that will not
7 have a chance at a cure objection.

8 THE COURT: Will have a new chance?

9 MR. KEENAN: Will not.

10 THE COURT: Oh, okay. So, those cure objections
11 were due and many were filed. I have looked at every one of
12 them. They will be heard on June 4th unless otherwise
13 resolved in advance, which we are hopeful that many will be
14 resolved.

15 MR. KEENAN: Right, but, otherwise, the
16 designation rights procedures will hold under the previous
17 designation order. That will be the procedures that will
18 govern counterparties rights. Subject to that clarification,
19 Oracle does not object and (indiscernible).

20 THE COURT: Mr. Kinney.

21 MR. KINNEY: Your Honor, again, for the record,
22 Brian Kinney of Milbank.

23 That is correct, the order at 663 is not approving
24 the assumption and assignment of any individual lease. It is
25 approving the sale of the intellectual property, but with

1 respect to the leases it's just approving a sale of the
2 designation rights and implementation of the designation
3 rights procedures which provide for subsequent notice and an
4 opportunity to object to the assumption and assignment based
5 on adequate assurance grounds. Again, as noted, since we did
6 notice all of these locations with their cure amounts there
7 is not an additional chance to object to the cure amount, but
8 there is to the adequate assurance and (indiscernible).

9 MR. KEENAN: Thank you, Your Honor.

10 THE COURT: Mr. Applebaum.

11 MR. APPLEBAUM: Good morning, Your Honor. Aaron
12 Applebaum, DLA Piper, on behalf of Red Hill Village LLC,
13 which is also a minority.

14 I think this is mostly a tag along to the prior
15 comments which we did file an objection which is Docket No.
16 609. Our lease does appear to be listed as part of the
17 Dollar Tree sale. My clients want to make sure that our
18 rights are preserved on the record with respect to the cure
19 amounts that is not being addressed today. Assumption and
20 assignment is conditioned on resolution of the cure amount
21 and any adequate assurance objection that we might file by
22 the May 30th deadline.

23 Thank you, Your Honor.

24 THE COURT: Mr. Kinney.

25 MR. KINNEY: That is confirmed.

1 THE COURT: Thank you.

2 Mr. Murley.

3 MR. MURLEY: Good morning, Your Honor. Luke
4 Murley of Saul Ewing for KRG Houston New Forest.

5 I rise to confirm that our cure objection can be
6 heard on June 4th and that is not prejudiced. I also want to
7 point out practical issues that we don't yet have adequate
8 assurance information. I believe the deadline was yesterday.
9 We will continue to coordinate with the other side, but our
10 ability to respond on adequate assurance is contingent on
11 actually getting information.

12 THE COURT: Could you, Mr. Kinney, address the
13 status of adequate assurance?

14 MR. KINNEY: Your Honor, to the extent that
15 adequate assurance information did not get served yet we will
16 make sure that it gets served today. When our first batch
17 went out yesterday, I just need to verify (indiscernible) but
18 also for this process the adequate assurance information will
19 occur after the designation.

20 Again, this is not being assumed today so its not
21 subject to the adequate assurance deadline to the sale order.
22 Its subject to the adequate assurance deadlines in the
23 designation procedures. So, that information would be
24 transmitted when the lease is designated and the objection is
25 not due until after that designation occurs.

1 THE COURT: Maybe you should insert a footnote in
2 this order stating that.

3 MR. MURLEY: I'm sorry, Your Honor.

4 THE COURT: I'm suggesting to the debtor that
5 perhaps they insert a footnote in the order clarifying that
6 because I am not certain, having read the order, that that is
7 abundantly clear. Of course, I'm not living it like you're
8 living it, but --

9 MR. KINNEY: Your Honor, that is perfectly fine.
10 We will insert an express clarification with respect to the
11 adequate assurance for the designation of properties.

12 THE COURT: Okay. Does anyone else wish to be
13 heard with respect to the sale of designation rights?

14 MR. GOLD: A quick clarification, please, Your
15 Honor.

16 THE COURT: Yes. Mr. Kinney, he is asking for a
17 clarification. I just want to make sure -- I'm sorry, I
18 didn't mean to interrupt you, but I am putting you on the
19 spot.

20 Go ahead, Mr. Gold.

21 MR. GOLD: Yes. Good morning, Your Honor. Ivan
22 Gold of Allen Matkins for a member of the debtors' landlords.

23 We have 11 leases that are part of the designation
24 rights transaction. Just a clarification, Your Honor, it's
25 my understanding, as we talk about June 4th, that is for the

1 other tranches of leases because, otherwise, we would be
2 adjudicating cures prior to the designation rights. So,
3 while we're adding footnotes that might not be another bad
4 one for us to add so you are not issuing advisory rulings on
5 cures that are being negotiated.

6 THE COURT: Yeah, I misspoke. They are not
7 necessarily ripe at that point.

8 MR. KINNEY: Your Honor, we can further adjourn
9 for any leases that are not part of one of the other -- that
10 is not part of the other transaction today we will either
11 further adjourn those cure objections or in some cases those
12 cure objections had become moot because the debtors are in
13 the process of rejecting those leases. So, we will update
14 and work with the landlords to adjourn those cure objections
15 till after the designation --

16 THE COURT: Thank you. And utilizing charts with
17 respect to your cure objections is very efficient.

18 MR. KINNEY: Thank you, Your Honor.

19 THE COURT: Does anyone else wish to be heard with
20 respect to the designation rights sale or the proposed form
21 of order?

22 (No verbal response)

23 THE COURT: So, I don't know -- did the U.S.
24 Trustee want to put their comments on the record? Are these
25 comments that --

1 MS. SIERRA-FOX: Rosa Sierra-Fox on behalf of the
2 U.S. Trustee.

3 Your Honor, with the Dollar Tree order our
4 comments were relatively minor.

5 THE COURT: Okay.

6 MS. SIERRA-FOX: So, I don't think that is
7 necessary. We have already agreed on those changes. So, we
8 are fine with our resolution.

9 THE COURT: Thank you.

10 Okay. So, having heard no one -- no further
11 objection, based on the record that's been made and the
12 resolution of all objections I'm prepared to approve the
13 uncontested sale of the designation right to Dollar Tree. I
14 am satisfied that the proposed sale constitutes a reasonable
15 exercised of the debtors' business judgment, yields maximum
16 value for the debtors' estate and is in the best interest of
17 the debtors or creditors.

18 Based on the Shin declaration at Docket 671 in
19 support of the multiple asset purchase agreements as well as
20 the Tabloff declaration at 669 in support of the sale of the
21 designation rights, the debtors and their advisors, in
22 consultation with consultation parties, engaged in a robust
23 auction process. The sale process provided a full, fair and
24 reasonable opportunity for any person or entity to make a
25 higher or, otherwise, better offer to purchase the assets.

1 The proposed sale does represent the highest and best offer.
2 The purchaser is entitled to all the protections afforded
3 under the bankruptcy code.

4 So, I will approve the proposed sale order with a
5 few modifications to the form of order. You are going to
6 have to bear with me because I kind of scribbled comments on
7 here. So, I'm sure you are familiar, in the introductory
8 paragraph, there needs to be a couple of conforming edits
9 about dates and docket number for the Tabloff declaration and
10 that type of thing.

11 MR. KINNEY: Yes, Your Honor.

12 THE COURT: I had a lot of comments on the
13 evidence, but I note that the declarations were very helpful
14 and tracked very nicely to the form of order.

15 MR. KINNEY: Thank you, Your Honor.

16 THE COURT: On Paragraph 22 these trade fixtures
17 these are debtors. I don't have to -- what I am concerned
18 about here is any lienholders that were, you know, banning
19 free and clear of property that is not the debtors.

20 MR. KINNEY: Correct, Your Honor. This is only
21 debtor property and it is subject to the lien of the
22 prepetition notes. That is the only lien on these.

23 THE COURT: So, they're consenting lienholders.

24 MR. KINNEY: They're consenting.

25 THE COURT: So, why don't you just tack onto the

1 end of that sentence something to the effect of consenting
2 lienholders.

3 MR. KINNEY: We will make that change, Your Honor.

4 THE COURT: Just out of an abundance of caution.

5 I think that is the only comment -- oh, I know,
6 Paragraph 29, the last sentence, what is this language about
7 a plan? Why is it in here, the language about a plan?

8 MR. KINNEY: Your Honor, its just to clarify that
9 a plan cannot affect this order and the relief granted in the
10 order. Its solely -- again, the sale will occur under this
11 order and the plan can't affect the rights of the purchaser
12 that are granted under the sale order.

13 THE COURT: I understand what's being done. I
14 don't love it, I will be honest, because to me orders speak
15 for themselves and then I will enter a confirmation order
16 that says this supersedes everything else. If there is a
17 conflict between the plan and confirmation order the
18 confirmation order will stand. So, I understand why its in
19 here, but I recommend to parties that they be vigilant when
20 they're looking at a plan. If they have an issue with it,
21 they should raise it.

22 With that modification and the comments of the
23 United States Trustee if you will upload a clean and
24 blackline under certification of counsel, we can get it
25 entered.

1 MR. KINNEY: Thank you, Your Honor. We will do
2 that after the hearing.

3 MR. LEBLANC: Your Honor, Andrew Leblanc again for
4 99 Cents.

5 What I would propose to do next, Your Honor, is to
6 cover the Ollie's transaction. So, the objection there --
7 the one remaining objection is the American National
8 objection. My understanding is the others have been resolved.
9 My colleagues can talk to that if necessary. And I know we
10 have submitted our evidence, Your Honor, and I know Ollie's
11 had submitted a declaration -- I'm sorry, not Ollie's.
12 American National had submitted a declaration. I know Ollie's
13 they are going to take the lead on responding to the
14 evidentiary submission and I will jump up as necessary at the
15 end and I will certainly take the lead on arguing our
16 position with respect to their objection.

17 THE COURT: Can you all just give me a minute, I
18 want to pull up the correct papers.

19 (Pause)

20 THE COURT: Okay. Let me ask before we proceed
21 any further, is there any other party, other than American
22 National Insurance, who objects to the proposed sale of the
23 leases to Ollie's Bargain Outlet which is Docket 637?

24 (No verbal response)

25 THE COURT: I hear no one. I am ready to proceed.

1 MR. LEBLANC: Your Honor, happy to proceed however
2 you would propose. What I think would make logical sense is
3 to the extent that American National wants to submit evidence
4 I would propose that that happen and then we can just do --
5 rather than doing openings, evidence, closing in an issue
6 like this I would propose we just deal with the evidence and
7 then we will turn to legal argument.

8 THE COURT: Well, since it's their objection I
9 will let them proceed first and then they can proceed if you
10 want to make an opening statement or not it's your choice.

11 MR. FRASER: Good morning, Your Honor. Simon
12 Fraser from Cozen O'Connor for American National.

13 My co-counsel, Marc Young, is here remotely. I
14 know also our declarant, Scott Webb, is available remotely
15 with permission from Chambers. I will turn the podium over -
16 - virtually over to Mr. Young.

17 THE COURT: All right. Thank you.
18 Mr. Young.

19 MR. YOUNG: Good morning, Your Honor. Marc Young
20 on behalf of American National.

21 First let me thank you for allowing us to attend
22 remotely as well as Mr. Scott Webb. I will represent to you
23 that Mr. Webb is in a separate office and apart in the
24 offices of American National. He is alone. In front of him
25 is a copy of his declaration and portions of the excerpted

1 lease that were attached to that declaration.

2 I would ask that, if we could, I have no objection
3 to proceeding as reflected by counsel with respect to putting
4 on evidence and then going into legal argument.

5 THE COURT: Okay.

6 MR. YOUNG: I would ask that, fi we could, since
7 the declarant is here, I do plan to present him and ask that
8 we stipulate to the admittance of his declaration and he laid
9 the underlying business records exception predicate for those
10 attachments. I would ask that as they are reflected in our
11 exhibit list, American Nationals exhibit list, that those two
12 be admitted into evidence by stipulation.

13 THE COURT: Is there any objection to that
14 proposal?

15 MR. LUCIAN: Good morning, Your Honor. John
16 Lucian of Blank Rome for Ollie's.

17 Your Honor, their request is to admit the
18 declaration. We would object to admission of the declaration
19 other than to authenticate Exhibits 1, 2, and 3 which I think
20 are the first six paragraphs of the declaration. I think that
21 may be what counsel is asking for and I need him to proceed
22 with direct exam of his witness for the balance.

23 THE COURT: Mr. Young.

24 MR. YOUNG: I was actually trying to economize
25 everyone's time and allow for the entire entry of the

1 declaration given that on the record counsel will be able to
2 cross-examine he can have an opportunity to examine the
3 particular statements made by the witness; otherwise, we are
4 going to go through the entirety of the declaration on the
5 record and I don't think that is an efficient use of our time
6 this morning.

7 MR. LUCIAN: Your Honor, I think the problem is
8 the second half of the declaration is the declarant
9 interpreting the lease and offering an opinion about
10 (indiscernible) term. Those may not get in on direct examine
11 either. We can't (indiscernible) efficiency, but we can
12 stipulate to what we believe are improper inclusions in the
13 declaration, Your Honor.

14 THE COURT: Mr. Young, let's proceed with your
15 witness.

16 MR. YOUNG: All right. Mr. Webb.

17 MR. WEBB: Yes.

18 MR. YOUNG: Can you please state, and you will be
19 sworn in here in a moment -- in fact, Your Honor, do you want
20 to swear him in first.

21 THE COURT: Wait a minute, Mr. Young. I'm sorry,
22 we need to take a minute. Can you make sure we're in
23 compliance with the broadcast protocol with the exception of
24 Mr. Webb and Mr. Young.

25 UNIDENTIFIED SPEAKER: For those on Zoom, anyone

1 who is audio only will now be moved to the waiting room.

2 UNIDENTIFIED SPEAKER: I do have copies of the
3 exhibits for anyone who would like them passed out or if you
4 would like me to pass them out.

5 THE COURT: I have Mr. Webb's declaration. Thank
6 you.

7 WILLIAM SCOTT WEBB, WITNESS, SWORN

8 THE CLERK: Please state your full name and spell
9 your last name for the record.

10 THE WITNESS: William Scott Webb, W-E-B-B.

11 THE CLERK: Thank you.

12 MR. YOUNG: Apologies, Your Honor. Marc Young for
13 American National.

14 We did get a stipulation with respect to the
15 exhibits being admitted. We can lay the foundation for
16 those.

17 MR. LUCIAN: That's correct, Your Honor. No
18 objection to Exhibits 1 through 3, which I believe are the
19 (indiscernible).

20 THE COURT: Okay. Exhibits 1 through 3 are
21 admitted.

22 (Exhibits 1 through 3 received into evidence)

23 MR. YOUNG: Thank you.

24 DIRECT EXAMINATION

25 BY MR. YOUNG:

1 Q Mr. Webb, please state your name for the record?

2 A William Scott Webb.

3 Q For the record, where are you testifying from today?

4 A Galveston, Texas in the American National office
5 building.

6 Q Who are you testifying on behalf of today?

7 A American National Insurance Company.

8 Q And if I say American National you understand that I am
9 referring to American National Insurance Company?

10 A Yes.

11 Q Okay. Are you generally familiar with the substance
12 and nature of the proceeding today?

13 A I am.

14 Q What is your general understanding of this proceeding
15 with respect to American National?

16 A Well, 99 Cents, through bankruptcy, has requested to
17 sell a portion of its assets and included in that is the
18 assets and the lease of our property that we own in Conroe,
19 Texas.

20 Q We will talk a little bit more about that property in a
21 moment. I want to go over some of your background. Is
22 American National your employer?

23 A Yes.

24 Q And what is your job title?

25 A Assistant vice president real estate.

1 Q And what are your duties and responsibilities as
2 assistance vice president real estate?

3 A Oversee a portion of the company's real estate holdings
4 and investments including mortgage loans and numerous
5 property types. Also, I assist and/or direct junior analysts
6 through their job and I am an authorized signator for
7 documents for American National.

8 Q How long have you been in real estate management in the
9 course of your career?

10 A Over 25 years.

11 Q And how -- during that time have you reviewed leases?

12 A Yes.

13 Q Have you negotiated leases?

14 A I have.

15 Q How many leases have you reviewed and negotiated over
16 the course of that 25 years?

17 A I would have to say its hundreds.

18 Q And you mentioned earlier property owned by American
19 National. Are you referring to the non-residential real
20 property located at 1406 East Loop 336 West Conroe,
21 Montgomery County, Texas?

22 A Yes.

23 Q Now does that property have a common name that you
24 refer to it as?

25 A Its Montgomery Plaza Shopping Center.

1 Q And how would you generally describe that property?

2 A It's a large shopping center with multiple anchors and
3 junior anchors.

4 Q Is American National the sole owner of that property?

5 A Yes.

6 Q Is American National the only landlord?

7 A Yes.

8 Q Are there multiple tenants?

9 A Yes, there are.

10 Q Is there a common parking lot?

11 A Yes.

12 Q What are some of the tenants that are located at the
13 Montgomery Plaza Shopping Center?

14 A There's (indiscernible) Academy, Big Lots, Spec's,
15 Petco.

16 Q Are you aware if American National has attempted to
17 maintain the particular mix of tenants in its management of
18 the Montgomery Plaza Shopping Center?

19 A Yes. I mean we attempt to maintain a variety mix of
20 tenants and merchandisers that will hopefully, you know,
21 maximize the foot traffic to the center.

22 Q Was there a purposeful selection in the tenants that
23 American National has selected or your predecessor in
24 interest selected in the Montgomery Plaza Shopping Center?

25 A Well, I would say yes, it --

1 MR. LUCIAN: Objection.

2 THE COURT: I'm sorry, I didn't hear your
3 objection.

4 MR. LUCIAN: Objection, foundation.

5 THE COURT: Mr. Young.

6 MR. YOUNG: I mean I don't really know how to
7 respond to an objection on foundation. I am asking him
8 specifically his opinion as working in realty management as
9 he understands it. If counsel is suggesting that we're
10 construing that as an expert opinion I don't think that is
11 the case. As has been testified, he's spent 25 years making
12 these decisions on behalf of American National. I think its
13 within his personal knowledge to state whether or not they
14 have maintained a particular mix of tenants.

15 MR. LUCIAN: He can offer a lay opinion, Your
16 Honor, but (indiscernible) I want to be clear he's not being
17 offered as an expert.

18 THE COURT: He's established a foundation to
19 answer the question.

20 Go ahead, Mr. Young.

21 MR. LEBLANC: Your Honor, I apologize. I think
22 the question that was asked was did you or the predecessor to
23 your ownership purposefully select -- I don't think he can
24 talk about the intention of his predecessor, of the people
25 that owned it prior to American National. That would be the

1 objection that I would make, Your Honor.

2 THE COURT: All right. Well, he can answer as to
3 him.

4 MR. LEBLANC: As to American National, but not as
5 to the predecessor.

6 BY MR. YOUNG:

7 Q Mr. Webb, do you understand the question?

8 A Yes.

9 Q And can you answer the question?

10 A Yes. We typically, in retail and shopping center
11 environments, try to purposefully place tenants in a mix that
12 will optimize, again, the foot traffic of the center and
13 also, obviously, income.

14 Q In the course of your 25 years are you familiar with
15 restrictive use provisions?

16 A Yes.

17 Q And are there any restrictive use provisions that you
18 are aware of with respect to the Montgomery Plaza Shopping
19 Center?

20 A Yes, there are.

21 Q Is there joint participation by the tenants, and trash
22 removal and other maintenance on that property?

23 A Yes. That is part of the CAM charges.

24 Q And would you describe this property, the Montgomery
25 Plaza Shopping Center, as your understanding in retail as a

1 shopping center?

2 A Yes.

3 Q Are you familiar with the lease between American
4 National and the 99 Cents store?

5 A Yes.

6 Q And as you heard, you know, virtually in the courtroom,
7 that was admitted into evidence as Exhibit 2. How are you
8 familiar with the lease between American National and 99
9 Cents store?

10 A I have reviewed it recently.

11 Q Is that something that you would be responsible for in
12 the course of your title or your job with American National
13 in managing that lease?

14 A Yes.

15 Q You also testified earlier that there is a Big Lots
16 store that is also a tenant in the shopping center, is that
17 correct?

18 A Yes.

19 Q Now, are you familiar with the lease between American
20 National and Big Lots?

21 A I am.

22 Q And what has been tendered and pre-admitted as Exhibit
23 1 is that the lease between American National and Big Lots?

24 A Yes.

25 Q And how are you familiar with this lease?

1 MR. LEBLANC: Your Honor, just a point -- I
2 apologize, point of clarification I believe the Big Lots
3 lease is Exhibit 3.

4 THE COURT: Exhibit 1 is the tenant estoppel
5 certificate.

6 MR. LEBLANC: Yes. Thank you, Your Honor.

7 MR. YOUNG: I was going off of our tendered
8 exhibit list and not how it was framed in the declaration.

9 MR. LUCIAN: I apologize. I'm using the
10 declaration and that is Exhibit 3 in the declaration.

11 THE COURT: Let's -- Mr. Young, let's all get on
12 the same page. Are you referring to your exhibit list?

13 MR. YOUNG: Yes, Your Honor. American National
14 filed an exhibit list --

15 THE COURT: Yeah, I understand.

16 MR. YOUNG: Let me --

17 THE COURT: Its Docket 627.

18 MR. LUCIAN: Your Honor, the confusion is we
19 admitted under the declarations that we were going off of.
20 They were 1, 2 and 3. I don't think matters the number as
21 long as we're on the same page.

22 THE COURT: Right. Could you bear with me a
23 second, I want to pull up your exhibit list so I have it in
24 front of me.

25 MR. YOUNG: Your Honor?

1 THE COURT: Yes.

2 MR. YOUNG: I'm fine to use the declaration if
3 everything that was appended there was admitted.

4 THE COURT: I don't think -- Exhibits 1, 2 and 3
5 were admitted, right? So, I guess we should specify for the
6 record then Exhibit 1 is the tenant estoppel certificate.
7 Exhibit 2 is the lease. Exhibit 3 is --

8 MR. LUCIAN: 2 is the 99 Cents lease and 3 is the
9 Big Lots.

10 MR. YOUNG: All right. So, to clarify, I was
11 asking just a moment ago I was referring to Exhibit 1, but,
12 in fact, Exhibit 2 for the record is the 99 Cents lease. Now
13 Exhibit 3 is the Big Lots lease.

14 You understand that change, Mr. Webb?

15 THE WITNESS: Yes.

16 MR. YOUNG: Can I proceed, Your Honor?

17 THE COURT: Yes, please.

18 BY MR. YOUNG:

19 Q Again, just to get back to what we were talking about
20 how are you familiar with the Big Lots lease between American
21 National and Big Lots?

22 A I have reviewed it.

23 Q Okay. Is this something -- is this lease something in
24 the course of your duties and responsibilities that you are
25 responsible for administering and managing on behalf of

1 American National?

2 A Yes.

3 Q And do you have signatory authority for American
4 National to enter into leases, amendments, and other legal
5 documents related to that?

6 A Yes.

7 Q And you said earlier you had reviewed this, are you
8 aware of any exclusive use provisions, as you understand them
9 in 25 years, as to what those are?

10 MR. LEBLANC: Objection, Your Honor. The document
11 speaks for itself and I think this is the point of the prior
12 objection which is everything that now follows in the
13 declaration is just the witness reading what is in the
14 document. I don't think Your Honor or any of the parties here
15 need that. I don't think there is any space for anything
16 beyond.

17 The documents are admitted. They have the
18 provisions they have. I don't think we need this witness's
19 opinions about those provisions. I think this question gets
20 exactly to that. He is defining it as a restrictive use
21 provision. We will make an argument about what it is and
22 what it says. That is what is relevant to the Court, not
23 this witness's testimony as to that issue. So, I would
24 object, Your Honor.

25 THE COURT: Mr. Young.

1 MR. YOUNG: I fundamentally disagree. This may be
2 the only opportunity for my client to offer evidence about
3 their understanding. If this contract is ultimately
4 determined to be ambiguous this is our only opportunity to
5 offer that evidence; otherwise, that assignment, when my
6 client is in breach, we are going to be dealing and wrestling
7 with this issue.

8 So, while it may not be the best opportunity and
9 there hasn't been a determination of ambiguity when else will
10 my client have an opportunity to provide into the record, you
11 know, its evidence as to what it understands the contract it
12 has been longstanding with means.

13 MR. LEBLANC: Two points, Your Honor. The
14 contract with 99 Cents was signed initially in 1984. The
15 contract with Big Lots was signed in 2009. My recollection,
16 I have to just look, but I think American National --

17 MR. YOUNG: I am going to object that is facts not
18 in evidence. That is not when that lease was entered. I
19 think, you know, Your Honor --

20 THE COURT: All right. I am going to allow him
21 some latitude. There is no jury here. I can give this the
22 weight it deserves.

23 So, Mr. Young, you may proceed because we're
24 spending more time on objections than we are on actually
25 dealing with the issue. So, you may proceed.

1 MR. YOUNG: Thank you, Your Honor.

2 BY MR. YOUNG:

3 Q Getting back to exclusive use provisions, are you aware
4 of any exclusive use provisions in this lease, Mr. Webb?

5 A Yes. Again, we're on Exhibit 3?

6 Q Exhibit 3, the Big Lots lease.

7 A Yes. Its Section 4.

8 Q Do you know if the lease distinguishes between what it
9 refers to as dollar stores and closeout stores?

10 A Yes, it does.

11 Q Does this lease, as you understand it specifically,
12 reference Ollie's?

13 A Yes, it does.

14 Q Was Ollie's open and operating for business in the
15 Montgomery Plaza Shopping Center on September 4th, 2009?

16 A No, it was not.

17 Q Was Ollie's open and operating for business in the
18 Montgomery Plaza Shopping Center as the successor of assign
19 of the 99 Cents store on September 4th, 2009?

20 A No.

21 Q In your 25 years of experience releases do you
22 understand Ollie's to be a dollar store?

23 A No, I do not.

24 MR. LEBLANC: Your Honor, I will just lodge an
25 objection for the record.

1 THE COURT: Understood.

2 BY MR. YOUNG:

3 Q Have you heard the term "closeout store?"

4 A Yes.

5 Q And based on your personal understanding what is a
6 closeout store?

7 MR. LEBLANC: Same objection, Your Honor.

8 MR. LUCIAN: Same objection, Your Honor.

9 THE COURT: Understood.

10 THE WITNESS: Usually, its synonymous to some
11 degree with liquidation of merchandise. It can largely be
12 name brands, bulk items, larger items typically would be sold
13 in a dollar store.

14 BY MR. YOUNG:

15 Q Have you personally been into an Ollie's before?

16 A I have.

17 Q And would you consider Ollie's -- how would you
18 characterize Ollie's based on your 25 years of management?

19 A As a closeout or liquidation store.

20 Q And I want to actually turn back to Exhibit 3. If you
21 would turn to page 8, please.

22 A Okay

23 Q If you would look at the second paragraph that begins
24 "So long as tenant is open and operating," do you see that?

25 A I do.

1 Q Can you please -- are you familiar with this sentence?

2 A I am.

3 Q Okay. Now, are you aware that debtors have contended
4 that they are accepted from any restriction on making this
5 assignment because they were a tenant in September of 2009?

6 A Yes.

7 Q What is your understanding of the terms of this lease
8 with respect to that?

9 MR. LEBLANC: Objection, Your Honor. He's now
10 asking him for a legal conclusion as to the ultimate issue.
11 I know you said you would give him latitude, but I don't know
12 how far that latitude goes. This is a question for Your
13 Honor to decide.

14 MR. LUCIAN: Same.

15 MR. YOUNG: Again, Your Honor, if you ultimately
16 deem this contract to be ambiguous by virtue of our argument
17 what other forum are we going to have to enter this into
18 evidence. If you deem it to be clear then you can disregard
19 this testimony. I don't know when we are going to have
20 another opportunity and forum to put this into evidence.

21 MR. LUCIAN: Your Honor, the witness did not
22 negotiate the lease. It's with a different entity that he
23 wasn't at, at the time it was entered into. This is just his
24 lay opinion of the interpretation of a lease.

25 THE COURT: Yeah, I'm struggling, Mr. Young, to

1 see how this isn't an interpretation of the language here.

2 MR. YOUNG: Again, Your Honor, I would -- we can
3 move forward, but, again, my client has come to an
4 understanding that they will be in breach if this is reached.
5 If this contract is deemed to be ambiguous then, again, when
6 will there be evidence offered as to the meaning of the
7 intention of the parties.

8 With regard to the argument about negotiated my
9 clients managed this lease for the -- the 99 Cents lease for
10 20 years and has managed this particular lease since they
11 took ownership of the property.

12 MR. LEBLANC: Your Honor, Mr. Young has said a few
13 times if not now than when will I offer this. I presume, like
14 us, they will argue that they are not in breach of the Big
15 Lots lease and they will make their arguments there. I am
16 just confused as to that. He is talking about the meaning of
17 a provision that this person didn't negotiate in respect of a
18 breach that is not before Your Honor.

19 So, where will he put that evidence in if and when
20 there's an allegation of a breach and their litigating that
21 issue there is what I would submit. Your Honor, to be
22 responsive to the question that counsel has asked a few times
23 here if not here when, when that issue is actually before a
24 Court.

25 MR. YOUNG: I am going to withdraw the question,

1 Your Honor. I am going to withdraw the question. We are
2 spending more time on this then getting through this.

3 BY MR. YOUNG:

4 Q I will ask you this, to counsel's point, Mr. Webb, is
5 it American Nationals position that if this lease is assigned
6 will it be in breach of the Big Lots lease?

7 A Yes, it will.

8 MR. YOUNG: I will pass the witness.

9 CROSS-EXAMINATION

10 BY MR. LUCIAN:

11 Q Good morning, Mr. Webb. Can you hear me okay?

12 A I can. Good morning.

13 Q My name is John Lucian. I am with Blank Rome. I
14 represent Ollie's. I have two questions for you, sir.

15 First, I want to be clear, your 25 years of experience
16 are in real estate management, not in retail operations,
17 correct?

18 A That is correct.

19 Q You have never worked for Ollie's, correct?

20 A I have not.

21 Q You never worked for Big Lots, Dollar General or Dollar
22 Tree, correct?

23 A That is correct.

24 Q And your testimony about having been in an Ollie's
25 store is just as a shopper, a consumer, correct?

1 A That's correct.

2 Q No specialized experience in Ollie's business
3 operations, correct?

4 A Correct.

5 Q You testified to your understanding of the Big Lots
6 lease here. I just want to clarify a couple of points that
7 you made.

8 You talked about dollar store versus closeout store.
9 Do you remember your testimony on that a few minutes ago?

10 A Yes.

11 Q Dollar General -- is Dollar General a dollar store in
12 your opinion?

13 A Yes.

14 Q And they're identified as such in the Big Lots lease as
15 a dollar store, correct?

16 A Correct.

17 Q Dollar Tree is also a dollar store?

18 A Yes.

19 Q You've been to Ollie's -- have you ever been to Dollar
20 General?

21 A I have.

22 MR. LUCIAN: I would like to mark, Your Honor, as
23 Ollie's Exhibit 1. We're going to have a little bit of a
24 logistics issue here, but I have a solution on it because the
25 witness is not in the courtroom. He may or may not need

1 this. I will hand one to counsel who is here for the witness
2 and Your Honor.

3 MR. YOUNG: I have not received this exhibit, Your
4 Honor.

5 MR. LUCIAN: His co-counsel has it in the
6 courtroom, Your Honor.

7 MR. FRASER: This is the first time I've seen it
8 also.

9 MR. YOUNG: I didn't see this 24 hours in advance.

10 MR. LUCIAN: Its for cross-examine. I'm not
11 seeking admission of the document. Its based on his
12 testimony.

13 THE COURT: Wait a minute. I don't even know what
14 it is.

15 MR. LUCIAN: May -- I have a few questions, Your
16 Honor.

17 BY MR. LUCIAN:

18 Q Have you ever been to Dollar Genera's website, Mr.
19 Webb?

20 MR. YOUNG: I'm going to object.

21 THE COURT: What is this exhibit? I don't know
22 what this is.

23 MR. LUCIAN: Your Honor, this exhibit is three
24 pages of a printout of Dollar General's website. Three items
25 on the website I want to ask about.

1 MR. YOUNG: Your Honor, I would like to see a copy
2 of that.

3 MR. LUCIAN: His counsel has it here in the
4 courtroom. Your Honor --

5 MR. FRASER: This is the first time I have seen
6 it. I have no idea what it is.

7 THE COURT: First of all, let's get a copy of this
8 to Mr. Young. We are going to have to take a break and Mr.
9 Young has got to get a copy of this.

10 MR. LUCIAN: Your Honor, if we take a short
11 recess, we can email it to Mr. Young and (indiscernible).

12 MR. YOUNG: Do you have any other exhibits? I
13 would suggest you go ahead and send them as well.

14 MR. LUCIAN: I have one copy to -- we can email
15 those quickly, Your Honor.

16 THE COURT: Okay. Why don't we take a five-minute
17 break so that he can get this exhibit and we will come back
18 in the courtroom at 11:15. We stand in recess.

19 (Recess taken at 11:09 a.m.)

20 (Proceedings resumed at 11:23 a.m.)

21 THE COURTROOM DEPUTY: All rise.

22 THE COURT: Okay. Please be seated.

23 Bear with me for a second, I'm logged out of my
24 computer.

25 Mr. Young, were you able to receive the document?

1 MR. YOUNG: Yes, Your Honor. I am in receipt of
2 the documents. I don't know how you would like to proceed on
3 my objections or I also -- since I'm not there I couldn't
4 approach counsel during the break and seek a stipulation with
5 respect to 1. I don't know if you would like us to do that or
6 just go straight to -- however, you would like to proceed,
7 Your Honor.

8 MR. LUCIAN: Your Honor, I did speak with Mr.
9 Fraser is stipulating there was an exhibit you have from the
10 Ollie's website. My understanding was we could stipulate to
11 the -- counsel can represent -- you can represent that your
12 document was printed off of the Ollie's website. I can
13 represent that the exhibit I handed before the break was
14 printed off of the Dollar General website. That was my
15 understanding of the stipulation of Mr. Fraser on
16 (indiscernible)

17 MR. YOUNG: Yeah, I would only add I'm agreeable
18 to that stipulation, and that is what I was going to suggest,
19 with the one caveat since I don't know where this document
20 came from with respect to Dollar General, this is the first
21 time I've seen it, and we haven't proffered anybody who has
22 laid a foundation for it. I am still willing to do that
23 stipulation if you will acknowledge that this document, when
24 it was produced, and that it was not produced or created in
25 or around September of 2009 when this lease was negotiated.

1 MR. LUCIAN: They are print offs of Dollar
2 General's website this morning within the last hour.

3 THE COURT: Okay.

4 MR. YOUNG: Okay. Then I am agreeable to the
5 Dollar General printouts and I object to the news articles
6 under 801.

7 THE COURT: I don't have any news articles.

8 MR. LUCIAN: We haven't gotten to anything else
9 yet. I sent him the other two.

10 MR. YOUNG: Can we go ahead and have that -- can
11 you go ahead and present those to the Judge so we can have
12 that conversation? I don't want to interrupt you if I can
13 avoid it.

14 MR. LUCIAN: If I need them, I will use them. I
15 don't know if I need them yet.

16 THE COURT: Okay.

17 MR. LUCIAN: (Inaudible).

18 BY MR. LUCIAN:

19 Q Mr. Webb, did you speak with your counsel during the
20 recess?

21 A I did not.

22 Q Two quick questions before I get to the exhibit from
23 your declaration, so I'm clear on the lease. The 99 Cents
24 store lease is Exhibit 2, it was entered into March 16th,
25 2004, on or about that date, correct?

1 A Yes.

2 Q In that lease the landlord was Weingarten, not American
3 National, correct?

4 A That is correct.

5 Q And you were never an employee of Weingarten, correct?

6 A Correct.

7 Q Same with the Big Lots lease. That was entered into on
8 or about September 4th, 2009, approximately 15 years ago,
9 correct?

10 A Correct.

11 Q Also Weingarten, not American National correct?

12 A Yes, that's correct.

13 Q And you're not a lawyer, correct?

14 A Correct.

15 Q So I'm going to ask you -- back to Dollar General now.
16 You've been a Dollar General -- a Dollar General store
17 before, correct?

18 A I have.

19 Q And you're aware they sell items that cost more than a
20 dollar, correct?

21 A Yes.

22 Q Some items substantially more than a dollar, correct?

23 A I have not personally seen or bought anything
24 substantially more from a Dollar General.

25 Q Well, I can't show you because you're -- on the computer

1 screen, but if you can't see it, I'm holding up what I've
2 marked as Exhibit 1 for Ollie's I'll represent to you it's a
3 printout from Dollar General's website of (indiscernible) and
4 I have 3 items.

5 MR. YOUNG: Can I -- I'm sorry to interrupt you,
6 Counsel.

7 But Your Honor, if I can drop this into the chat
8 feature, so he can --

9 MR. LUCIAN: That would be great.

10 MR. YOUNG: -- Mr. Webb can pull this up. I don't
11 know if I can do that or the clerk can.

12 THE COURT: Can you share screen?

13 (Court and court personnel confer)

14 MR. YOUNG: I'm happy to share screen for opposing
15 --

16 THE COURT: Okay. That's very kind of you, Mr.
17 Young. Okay. You should be able to share screen now, sir.

18 MR. LUCIAN: Those in attendance are waiting with
19 bated breath Your Honor (indiscernible)

20 BY MR. LUCIAN:

21 Q Mr. Webb, can you see what is on the screen?

22 A I can.

23 Q This is an Air Flex all black, pedestal, oscillating
24 fan. Do you see that?

25 A I do.

1 Q Does it surprise you that Dollar General sells an
2 oscillating fan?

3 Q No, not completely. No.

4 MR. LUCIAN: Does it -- counsel could maybe --

5 Q Does it surprise you that they sell an item that's
6 reflected on here for \$27?

7 MR. YOUNG: I'm going to -- I'm going to object to
8 relevance. I don't know if the surprise -- to counsel's
9 earlier point, this is -- we've stipulated to its admittance,
10 it's speaks for itself. I don't, you know --

11 MR. LUCIAN: Well, Your Honor, he's testified that
12 -- his understanding of the distinction between a close-out
13 store and a dollar store, and so I think this is relevant to
14 examine briefly about his understanding and what facts he
15 considered in his of opinion distinction between the -- I just
16 have like two more questions.

17 THE COURT: I'll allow it, but yeah, keep it --

18 BY MR. LUCIAN:

19 Q So does it surprise you, sir, that they sell an item
20 that costs \$27?

21 A Somewhat, yeah.

22 MR. LUCIAN: Okay. Could you -- Counsel, could
23 you kindly scroll down to the next one? Thank you.

24 BY MR. LUCIAN:

25 Q Here we have the second of three items:

1 A Bestway OGO steel pro pool, nine foot, for \$75. Do
2 you see that?

3 A I do.

4 Q Does it surprise you that Dollar General, a dollar
5 store, you testified to, sells an item, a pool, for \$75?

6 A Again, yes, it does.

7 MR. LUCIAN: And please scroll down one more page.

8 Q The third and final item is an electronics item, a blue
9 tooth powered speaker system for \$40. Do you see that?

10 A Yes.

11 Q Does it surprise you that a dollar store sells
12 electronics that cost \$40?

13 A Again, yes, a little bit.

14 Q Thank you. Counsel thank you for doing that I
15 appreciate that.

16 Just a few more questions for you, Mr. Webb.

17 Are you -- do you have any knowledge of how the
18 industry, the dollar discount, closeout industry groups
19 stores together?

20 A I -- I can't say that -- that I do specifically, no.

21 Q Would it surprise you if Ollie's was grouped with Dollar
22 General by industry analyst?

23 A Yes, it would.

24 MR. LUCIAN: Your Honor, may I approach with what
25 I'll mark as Exhibit 2?

1 MR. YOUNG: Your --

2 MR. LUCIAN: He can raise the objection
3 (indiscernible)

4 MR. YOUNG: Well --

5 MR. LUCIAN: Counsel, for the record, this is the
6 Bloomberg article (indiscernible) --

7 MR. YOUNG: Yeah, I'm going to --

8 MR. LUCIAN: -- (indiscernible)

9 MR. YOUNG: I'm going to object to this, Your
10 Honor, as hearsay. It's being offered by a declarant for the
11 matter -- truth of the matter asserted, who's not even here.

12 Moreover, it wasn't provided in advance. I've had
13 no opportunity to really digest this, nor has the witness.
14 And he just conceded the point that he didn't have an
15 understanding. So I'm going to object to allowing either of
16 these news articles in.

17 The declarant is not here to talk about it and we
18 haven't presented Mr. Webb as an expert in these matters on
19 dollar stores. We've talked about as they were used in a
20 lease created more than ten years ago.

21 MR. LUCIAN: Your Honor, first, I'm not moving
22 their admission I haven't done yet. That objection is
23 premature. Second -- he's testified that his lay opinion
24 understanding of the distinction between the two and I'm
25 entitled to impeach him on that by asking him questions about

1 documents that are in front of them. Your Honor determines
2 the weight of that. But I have not asked to move this into
3 evidence. I can hand him my pen and ask him a question about
4 (indiscernible) for impeachment purposes. And it goes to his
5 understanding, which is the opinion that he's (indiscernible)

6 MR. YOUNG: This is an unauthenticated printout
7 from who knows where without the authors present. I'm going
8 to maintain my objection, Your Honor.

9 THE COURT: Yeah, I'm going to sustain the
10 objection.

11 MR. LUCIAN: All right. Then I'll move on.

12 BY MR. LUCIAN:

13 Q Mr. Webb, then, to be clear, if industry analysts group
14 Ollie's with Dollar General, would you agree or disagree that
15 that's an appropriate grouping?

16 A In certain aspects, possibly.

17 MR. LUCIAN: Nothing further, Your Honor.

18 THE COURT: Thank you.

19 Any redirect, Mr. Young?

20 MR. YOUNG: Yeah, just very briefly, Your Honor,
21 since the questions that were asked regarded my witness'
22 understanding, Mr. Webb's understanding of what a "dollar
23 store" means.

24 REDIRECT EXAMINATION

25 BY MR. YOUNG:

1 Q I would just ask you this: You've -- you were familiar
2 with "dollar stores" in or around 2009, as the term is used
3 in your experience with the lease. Were you familiar with
4 how that term was used in 2009?

5 A Yes.

6 Q And what's your understanding of what has happened with
7 respect to dollar stores over the course of, you know, the
8 last ten or more years, in terms of pricing, if I need to be
9 more specific?

10 A Well, I -- I think the overall economy and so forth has
11 expanded and -- and grown and gotten more expensive, to where
12 they cannot necessarily sell their items for a dollar anymore
13 and make a profit.

14 MR. LUCIAN: Your Honor --

15 Q And the --

16 MR. LUCIAN: -- move to strike that testimony for
17 lack of foundation. He's a real estate management executive,
18 he's not a financial analyst and couldn't answer questions
19 about the industry when I crossed him.

20 MR. YOUNG: Your Honor, I just asked what his
21 personal understanding was. You can give it the weight that
22 you desire to.

23 THE COURT: I'm going to sustain.

24 MR. YOUNG: Fair enough. Thank you, Your Honor.

25 THE COURT: Thank you.

1 THE WITNESS: Am I able to say anything more?

2 MR. LUCIAN: No questions asked your honor

3 (Indiscernible)

4 THE COURT: No.

5 MR. YOUNG: Well, I haven't passed the witness, so

6 ...

7 BY MR. YOUNG:

8 Q Based -- did you personally go into a Dollar General
9 store or a similar store in or around 2009?

10 A I -- I most likely did, yeah, but I can't remember
11 specifically.

12 Q And in or around that time, were, generally, items
13 priced at around a dollar or a couple of bucks?

14 MR. LUCIAN: Objection. He's testified he can't
15 remember. This is most likely (indiscernible) speculation,
16 Your Honor (indiscernible)

17 MR. YOUNG: If he can remember, he remembers; if
18 he can't, he can't.

19 THE WITNESS: That's what dollar stores were known
20 for, as to be priced -- have prices on a majority of their
21 merchandise at a buck or -- or a little over.

22 MR. YOUNG: Pass the witness, Your Honor.

23 THE COURT: Okay. No --

24 MR. LUCIAN: (Indiscernible)

25 THE COURT: Okay. Okay.

1 (Witness excused)

2 THE COURT: I'll hear argument.

3 MR. YOUNG: Well, I would like to call --

4 THE COURT: Oh, I'm sorry, Mr. Young.

5 MR. YOUNG: I would like to call -- and I guess,
6 with respect to Ollie's witness list, they didn't proffer a
7 witness with respect to the statement of assurances. I can
8 speak to those as they stand, since they've already been
9 entered. I don't need to lay any foundation.

10 Well, I'm sorry. I was looking at the witness
11 list and there's no one here to really speak to the statement
12 of assurances. But I'll just speak to that in the record, as
13 it's stated in the record.

14 THE COURT: Okay.

15 MR. YOUNG: So now we're moving to argument.
16 Would you like me to proceed, Your Honor?

17 THE COURT: Yes. Bear with me one second. Okay.

18 MR. YOUNG: American National's objection before
19 the Court today embodies the very reason that Congress
20 created the shopping center exception under Section 365(b) (3)
21 and under 365(b) (4) of the Bankruptcy Code.

22 An assignment of the 99 Cent Store lease in the
23 Montgomery Plaza shopping center is in direct violation to
24 the Big Lots lease, another tenant in the shopping center;
25 and should, therefore, be foreclosed as a matter of law under

1 365(b) (3) of the Bankruptcy Code.

2 American National, as owner and landlord, as was
3 testified today, has worked to build a very specific tenant
4 mix and maintain that mix of commercial businesses. The
5 leases in the Montgomery Shopping Center Plaza were
6 negotiated, agreed upon, the specific terms of those leases,
7 to include competing business restriction. And consideration
8 agreed were based, among other things, on those terms.

9 To allow this assignment essentially allows a
10 competing store to come in an existing shopping center and
11 oust another tenant to the detriment of my client. This is
12 precisely why 365(b) (3) was enacted.

13 As this Court, in In Re Three A's Holdings, LLC,
14 2007 WL 831662 (Bankr. D. Del.) stated, citing a Third
15 Circuit holding:

16 "The legislative intent behind the so-called
17 'Shopping Center Amendments' is clear: to protect the rights
18 of lessors and the center's other tenants. Congress
19 recognized that unlike the usual situation where a lease
20 assignment affects only the lessor, an assignment of a
21 shopping center lease to an outside party can have a
22 significant detrimental impact on others, in particular the
23 center's other tenants."

24 That's exactly, Your Honor, what's happening here.
25 Certainly, American National understands the

1 import of the sale to the estate. But the legislative
2 history here is quite clear that -- and again, this is citing
3 another Delaware decision in the third -- or actually, a
4 Third Circuit, In Re Joshua Slocum Ltd., that recognizes that
5 the tenant mix a shopping center may be as important to the
6 lessor as the actual promised rental payments because certain
7 mixes will attract higher patronage of the stores in the
8 center and, thus, a higher rental for the landlord from those
9 stores that are subject to a percentage of gross receipts
10 rental agreement.

11 It is undisputed that Montgomery Plaza Shopping
12 Center is, indeed, under 365(b)(3) and (4), a shopping
13 center. The question then becomes whether or not it violates
14 the Big Lots lease tenant and, frankly, the 99 Cent lease
15 tenant.

16 That takes us to a question of contractual
17 interpretation. The contract provides that Texas substantive
18 law applies in this instance, Your Honor.

19 And I would ask that my co-counsel Simon Fraser
20 proffer to you and to debtors' counsel and, I guess, counsel
21 for Ollie's, as well, the case Coker v. Coker from the Texas
22 Supreme Court, dated 1983. And I'd give him an opportunity
23 to do that before proceeding, Your Honor.

24 THE COURT: Okay.

25 (Pause in proceedings)

1 MR. FRASER: Would Your Honor like a copy?

2 THE COURT: Yes, please. Thank you. Thank you.

3 MR. YOUNG: Your Honor, and I would direct counsel
4 and yourself to Page 3 of Coker v. Coker, as reflected on the
5 document. And I'll proceed at your -- when you're ready for
6 me to.

7 THE COURT: Okay.

8 MR. YOUNG: All right. I'm in the first --

9 THE COURT: Well, excuse me --

10 MR. YOUNG: -- keynote section.

11 THE COURT: -- one second. Do you have any extra
12 copies of this opinion?

13 MR. FRASER: I had, I think, seven copies, and I
14 handed them all out.

15 THE COURT: Could you -- I was going to say, could
16 you share -- thank you.

17 UNIDENTIFIED: Is one okay, Your Honor?

18 THE COURT: Thank you.

19 (Participants confer)

20 THE COURT: Thank you.

21 Okay, Mr. Young.

22 MR. YOUNG: All right. Thank you, Your Honor.

23 On Page 3, in the keynotes one, two, three, Texas
24 Supreme Court law is clear:

25 "In construing a written contract, the primary

1 concern of the court is to ascertain the true intentions of
2 the parties as expressed in the instrument."

3 To achieve -- moving on to Page 4:

4 "To achieve this objective, courts should examine
5 and consider the entire writing" --

6 Emphasis added.

7 "-- in an effort to harmonize and give effect to
8 all the provisions of the contract so that none will be
9 rendered meaningless."

10 It then proceeds:

11 "No single provision taken alone will be given
12 controlling effect; rather, all the provisions must be
13 considered with reference to the whole instrument."

14 So, if we take the argument of debtors, we would
15 render superfluous and meaningless an entire section of the
16 Big Lots lease, the 99 Cent exception. If we take their
17 reading as stated, there is no need for a 99 Cent lease
18 exception because it would have already been provided for by
19 existing tenants.

20 It's very clear -- and before I proceed, I want to
21 -- I want to direct the Court's attention to Exhibit 3, Page
22 8. That's the Big Lots lease.

23 (Pause in proceedings)

24 MR. YOUNG: And this is where the language comes
25 in, Your Honor. It states -- and this is the contention of

1 debtors with respect to this language, "So long as tenant is"
2 -- "as provided above" --

3 THE COURT: But Mr. Young --

4 MR. YOUNG: "-- except for tenants" --

5 THE COURT: Mr. Young, you were cut off while you
6 were speaking. It froze. So, you need to start at so you need
7 to start at "so long again."

8 MR. YOUNG: Okay. Did you hear --

9 THE COURT: I heard so long and then you froze.

10 MR. YOUNG: Okay. Yes, Your Honor. I will
11 continue. So, I am reading from page 8 of the Big Lots lease
12 which is admitted as Exhibit 3:

13 "So long as tenant is open and operating its
14 business on the premise for the initial permitted use, as
15 provided above, except for tenants and their successors and
16 assigns open and operating for business in the shopping
17 center as of the effective date of this lease no dollar store
18 operation in excess of 10,000 square feet of floor area or
19 closeout store competing business may be permitted in the
20 shopping center during the original term of its lease or any
21 option terms or extensions thereof."

22 The debtors would contend that this provision
23 except of tenants and their successors and assigns will
24 permit the assignment of anyone from 99 Cents store because
25 they were open and operating as of the date in 2009 when this

1 lease was formed; however, that would render meaningless the
2 entire reason to have a 99 Cents exception. Moreover, it
3 doesn't matter because this next succeeding sentence trumps
4 this sentence.

5 I will continue: In addition to the foregoing, in
6 addition to, so no matter what is stated before, whether it's
7 a closeout store or a dollar store in excess of 10,000 square
8 feet in addition to the foregoing whether or not its except
9 for tenants a competing business shall include without
10 limitation. In other words, without any limitations provided
11 by the proceeding section, the foregoing, the following
12 business operations. Then it enumerates a number of those
13 which includes expressly Ollie's Bargain Outlet.

14 So, you have, one, its undisputed that Ollie's was
15 not a tenant in September of 2009. Ollie's was not a
16 successor and assign of a tenant in 2009 and mind you, during
17 that time there were other assignees of other tenants that
18 that language is seeking to capture. So, in addition to
19 without limitation Ollie's Bargain Outlet. It is expressly
20 there.

21 Then we continue: "Notwithstanding the foregoing
22 there is a 99 Cents exception." So, they do acknowledge that
23 you have a closeout operation and you have a dollar store
24 operation. If I might, if you turn to page 9 of this
25 agreement, and I will come back to this and you will see why

1 I am going in this order, I hope, at the top of page 9 of the
2 Big Lots lease, the very first paragraph that starts
3 "Therefore, purposes of clarification."

4 "For purposes of clarification a dollar store
5 shall include by way of illustrative example without
6 limitation the following business operations, 99 Cents only,
7 Dollar Tree, and Dollar General."

8 Then it goes onto describe: "Dollar store shall
9 not be deemed a competing business unless that dollar store
10 occupies more than 10,000 square feet of floor area of the
11 shopping except for the 99 Cents exception."

12 Then it goes on later in that paragraph and it
13 states: "Further, a closeout store shall not include any
14 branded or private label fashion apparel" and then it goes on
15 to talk further about closeout stores. So, clearly going
16 back to page 8, the lease was intended to describe two
17 distinct types of stores, dollar stores and closeout stores.
18 Then there was a second distinction of dollar stores in
19 excess of 10,000 square feet which takes us to the 99 Cents
20 exception which follows that same paragraph on page 8.

21 If 99 Cents is premised to a dollar store or
22 vacates its premises and landlord subsequently leases such
23 premises to a dollar store, replacement dollar store tenant
24 that any such event, such assignee, sublease, or replacement
25 dollar store tenant shall not be deemed a competing business

1 notwithstanding the fact that such premises are being
2 operated for the purpose of a dollar store and occupy more
3 then 10,000 square feet of floor are of the shopping center,
4 the 99 Cents exception.

5 There would be no point for a 99 Cents exception
6 if we read this document the way debtor suggests. In fact,
7 the controlling language here and the dispositive language is
8 the express not permitted, Ollie's Bargain Outlet. That is
9 the controlling. In addition to the foregoing its very clear,
10 its saying no matter what we just said this is included
11 without limitation.

12 Your Honor, as you heard testimony, my client
13 views that they will be in breach of this lease if this
14 assignment is, indeed, made. They have testified that it
15 will disrupt the mix of tenants that are currently there
16 under 3643(d) and if you look further into this same Section
17 4 under use and operations of the Big Lots lease, what
18 happens when they are in breach is that Big Lots can remain
19 in place for up to a year paying half of the rent.

20 So, if the Court ultimately is inclined to say
21 that we have misinterpreted this contract we would ask for a
22 finding of fact and a conclusion of law from this Court that
23 my client is not in breach under these terms. Now we are not
24 conceding because we do believe that, as I have stated, that
25 in addition to is quite clear, but we would ask that the

1 Court make that rendering because, otherwise, American
2 National is going to bear the brunt of this assignment
3 effectively without recourse.

4 Sorry, Your Honor, I'm just looking through my
5 notes real quickly.

6 THE COURT: Take your time.

7 MR. YOUNG: I would also offer, under Texas -- and
8 I apologize, I don't have a copy of this, but I know that
9 debtors have filed a request for leave. If that is granted we
10 would ask that we have an opportunity -- we will be filing a
11 request for leave to either amend our objection to address
12 those issues or to file a response because we didn't have an
13 opportunity that was, obviously, before the hearing to
14 respond.

15 Under O'Connor v. O'Connor, 694 S.W. 2d 152 (1985)
16 Texas Appellate Court, generally where there are general
17 special provisions in a contract relating to the same thing
18 the special provisions control. Here, you have express
19 language saying in addition to whatever else Ollie's is not
20 permitted. So, therefore, American National believes its in
21 breach and, therefore, is opposed to the assignment of this
22 lease to Ollie's under 365(b)(3) and 365(b)(4).

23 Thank you, Your Honor.

24 THE COURT: Mr. Young, if this

25 UNIDENTIFIED SPEAKER: I'm sorry, Your Honor. I

1 think the phone might still be turned off if I am not
2 mistaken. I think Zoom is (indiscernible).

3 THE COURT: My question is assume that the Court
4 interprets the Big Lots lease to contradict Section 365,
5 tenant mix provision. Which controls, the statute or the
6 contractual language?

7 MR. YOUNG: I don't have case law or authority to
8 provide you, Your Honor, on this particular question. I am
9 happy to provide additional briefing, but I would say that
10 its an equitable remedy and so if you were to find under
11 365(b)(4) that it would supersede the contractual language,
12 because that is what its intended to do, its irrespective of
13 the contract if this is upsetting this balance.

14 Now, obviously, there is limits to that, I would
15 imagine, but I would think it would control. We also, and I
16 know you didn't ask this question, Your Honor, but clearly we
17 view it to violate 365(b)(3) as well. So, we don't -- you
18 know, we think they are both hand in glove.

19 THE COURT: Thank you.

20 MR. LEBLANC: Good morning, Your Honor. Andrew
21 Leblanc again on behalf of 99 Cents store.

22 Your Honor, I think, and I will concede that this
23 is a first for me, but I fundamentally disagree with the
24 party that they are breaching the contract. I think they are
25 just misreading the very contractual language that they just

1 walked you through. I will try to do so as well, Your Honor.

2 I will -- let me just begin, I haven't seen the
3 O'Connor v. O'Connor. It wasn't among the note cases cited
4 in their objection, but O'Connor v. O'Connor itself, if you
5 just read on in the very case that he handed to you it says
6 after the -- it's the very next passage that says no single
7 provision taken alone will be giving controlling effect. The
8 next sentence says in harmonizing these provisions, terms
9 stated earlier in agreement must be favored over subsequent
10 terms.

11 So, let me use that as the jumping off point to
12 make the point, Your Honor, that I think the analysis here
13 begins and ends with the first sentence of the provision that
14 we have all been looking at. I am going to -- its -- this is
15 on page 8 of their Exhibit 3, the Big Lots lease. Just to
16 reinforce, Your Honor, what I had said before, I think
17 counsel's right, it wasn't from 1984. There is a reference
18 to 1984 in the 99 Cents only lease. The lease looks like its
19 from 2005, but whenever it was it predates the Big Lots. So,
20 99 Cents store was a tenant in this -- operating under their
21 lease prior to Big Lots ever coming into existence as a
22 tenant.

23 What it says is, and this is the part that I
24 struggle with even understanding argument. It says so long
25 as tenant is open and operating that is Big Lots and --

1 THE COURT: I'm sorry. Let me find the right
2 spot.

3 MR. LEBLANC: Sure. Your Honor, this is the
4 second paragraph that's on their Exhibit 3, second paragraph
5 on page 8 under use and operation. Page 9 of the PDF, page 8
6 internally. And, Your Honor, I will just tell you that I'm
7 actually using from our reply brief because the print is a
8 little bit bigger and my eyes are a little bit older.

9 So, what it says is as long as tenant is open and
10 operating its business in the devised premise for the initial
11 permitted use, as provided above, except for tenants and
12 their successors and assigns. I am going to pause there but
13 it goes on to say open and operating for business in the
14 shopping center as of the effective date of this lease. Then
15 it goes on from there.

16 To me, Your Honor, I think what he elided over was
17 the notion of successors and assigns. The suggestion is that
18 successors and assigns, as using that parenthetical, has to
19 be a successor and assign open and operating for business in
20 the shopping center as of the effective date of this lease. I
21 just think that is fundamentally wrong. And I would
22 encourage them, if there is a litigation with Big Lots over
23 it, I would encourage them to adopt this argument to make the
24 point that if you read it the way that they are then you are
25 rendering surplusage, the parenthetical, that says and their

1 successors and assigns. Why is that? Because if we were
2 sitting here and -- if we had assigned the lease to Ollie's
3 in 2008 the tenant operating in the space in 2009, when the
4 Big Lots lease was executed, would be Ollie's. So, Ollie's
5 would be the tenant in that sentence.

6 So, the and their successors and assigns would be
7 rendered surplusage. Had Ollie's become a successor to 99
8 Cents prior to the entry into the Big Lots lease and Ollie's
9 would be the successor -- would be the tenant and, therefore,
10 would be captured by this language. Your Honor, I think
11 they're misreading it and I think the way you harmonize this
12 and the 99 Cents exception is the following. What the
13 counterparties to this agreement -- and the counterparties to
14 this lease do not include 99 Cents to be clear and do not
15 include Ollie's. The counterparties to the lease that we are
16 looking at are Big Lots and the predecessor interest to
17 American National.

18 What they agreed is that if the lease is turned
19 back to the landlord the landlord will not go out and lease
20 it to another similar party. That's the point, Your Honor.
21 They didn't put any limitation and I think the better reading
22 of this agreement is that they didn't put any limitation on
23 the ability of 99 Cents to assign it and particularly didn't
24 do so in a bankruptcy as we're trying to do here. Instead,
25 they made clear that if this particular lease is turned back

1 to the landlord, the landlord is constrained.

2 So, in other words, the counterparty to that
3 contract is constrained. And, Your Honor, I think that is
4 what -- I think -- to me, that is the better reading of this
5 language and this is the proceeding to use the
6 (indiscernible) language. This comes earlier in the
7 contract. Therefore, Your Honor, they are not in breach of
8 the Big Lots lease because the assignment that we are talking
9 about is by 99 Cents store to Ollie's. 99 Cents store is the
10 tenant and if you go through the language, Your Honor, what
11 it says is its -- there's a timing component of it but the 99
12 Cents lease has been extended through 2035. So, as long as
13 its provided for through the term of the lease or any
14 extensions then they are not in breach of that agreement.

15 I think that is the answer to the question. The
16 focus on -- I am struggling to understand the focus on the
17 phrase in addition to the foregoing, which comes in the next
18 sentence because clearly in addition to the foregoing a
19 convening business challenge without limitation is an effort
20 to add words or more definition to what constitutes a
21 competing business. It doesn't add to the prohibition. It
22 doesn't trump the language that comes before it. So, I just
23 think, Your Honor, that they're misreading the contract.

24 THE COURT: What do you think is the purpose for
25 the addition sentence?

1 MR. LEBLANC: Your Honor, it adds definition to
2 what constitutes a competing business. That the landlord --
3 again, this is what I think is critical, that the landlord
4 could not lease the space to subsequent to 99 Cents returning
5 its lease. It doesn't affect what 99 Cents can do because 99
6 Cents is free to assign its lease. This doesn't prohibit 99
7 Cents from assigning its lease because 99 Cents was a tenant
8 at the time that the Big Lots lease was entered into. What
9 it precludes is the landlord, its counterparty, from if it
10 gets back the space from using that space in a way that is
11 inconsistent with this. It adds definition to what would
12 constitute a non-permitted use meaning who put a least to it.
13 That is a definition to what constitutes a competing
14 business.

15 I am going to leave to Ollie's counsel the
16 argument with respect to whether or not they constitute a
17 dollar store. I will leave that argument entirely to them
18 because I don't think that from our purposes, Your Honor, I
19 don't think you get past the first sentence. The first
20 sentence is the one that makes clear that the tenants, we,
21 the 99 Cents store, can assign this lease and as long as we
22 are the ones assigning the lease then it doesn't implicate
23 the Big Lots lease in any respect; therefore, there is no
24 breach of the Big Lots lease.

25 Again, I would suggest that they make this

1 argument if and when Big Lots contends there is a breach of
2 this agreement. Obviously, Your Honor, the answer to the
3 Court's question we believe the statutory language trumps the
4 contractual language and we think this lease is critical for
5 us to assume -- to assign, rather, Your Honor, under the
6 terms of the stalking horse bid that is before the Court and
7 we simply think that they are misreading the contract and
8 arguing that it's a breach. We think if Your Honor simply
9 orders it and says your read of the contract is that it's in
10 compliance because you complied with the terms of the
11 contract, I don't know where -- I don't know what the issue
12 that they could possibly contend with.

13 They will have -- I'm sorry, if Big Lots wants to
14 come back and make that argument they can, but, Your Honor,
15 we don't think that is any issue for this Court and we
16 should, both Ollie's and we, should be able to move on with
17 Ollie's having paid us the (indiscernible) and with us
18 assigning them the lease.

19 Your Honor, I do -- I will repeat what I said at
20 the outset. We are, just for the sake of good order, because
21 this is the only one that is objected to, going to ask the
22 Court at the end to enter a separate order with respect to
23 this lease. We have talked with counsel to Ollie's and we
24 have agree that we are going to allocate a portion of the
25 purchase price to this particular lease. So, this lease will

1 have a \$600,000 purchase price.

2 The rest of them will have the balance of the
3 purchase price, so the \$14 million for the rest of them. I
4 just wanted to put that on the record so Your Honor is aware
5 because we just want to make sure that for the sake of good
6 order that this lease is not tied up with -- that the
7 assumption and assignment and the sale of the other
8 properties are not tied up with this lease.

9 Your Honor, I am happy to answer any questions,
10 but I know Ollie's counsel is going to make their argument
11 with respect to their characterization, but happy to answer
12 any questions the Court may have.

13 MR. YOUNG: Your Honor, I would like to respond to
14 counsel prior to Ollie's, just to keep these arguments if
15 possible.

16 MR. LEBLANC: Your Honor, I suspect that Ollie's
17 is also going to argue --

18 THE COURT: Yeah, I was going to say, Mr. Young,
19 you obviously will get the last word. I'd like to hear what
20 Ollie's has to say, as well, so that you can address all of
21 it at once.

22 MR. LEBLANC: And, Your Honor, with respect to it
23 being the last word, it is our motion. I know it's their
24 objection, and I understood why Your Honor wanted to hear
25 from them first, but I do think it's our motion.

1 THE COURT: Well, we'll see. I may not want to
2 hear from any of you --

3 MR. LEBLANC: Understood, Your Honor.

4 THE COURT: -- so I appreciate that, but let's see
5 where we go.

6 MR. LUCIAN: Thank you, John Lucian with Blank
7 Rome, for Ollie's. For the sake of efficiency, I thought Mr.
8 LeBlanc made most of the points that we would make, so we'll
9 just adopt and join in his argument.

10 But I will address then solely, Your Honor, that
11 the issue of replacement dollar store tenant. And of course,
12 that only comes up if Your Honor disagrees with the analysis
13 of the first sentence of the second paragraph before and
14 about what that parenthetical means.

15 But even if you were to, for argument purposes,
16 accept the landlord's interpretation of that, Your Honor,
17 there's still no breach here because Ollie's would meet the
18 definition. There is an exception to the competing business,
19 Your Honor, I don't know a dozen lines down where it's says
20 notwithstanding -- so we have the first sentence that's so
21 long as, and the second sentence, which counsel focused on
22 the in addition to.

23 But then we have to look at the third sentence,
24 notwithstanding the foregoing. And that sentence allows,
25 right, the assignment of a lease or sublease "to a dollar

1 store", to a Dollar or (inaudible) vacate its premises and
2 landlord subsequently leases such premises to a dollar store,
3 parens and quote, the replacement dollar store tenant.

4 So this is really talking about the landlord's
5 rights in the event that the debtor were to go dark and
6 leave, which is not the case here, Your Honor.

7 But again, even if somehow you agree with their
8 contorted interpretation of that, you still have this
9 exception for the replacement dollar store tenant. It
10 doesn't define what a dollar store is.

11 So if we go to the next page, internal page nine,
12 PDF page ten, first full paragraph says, for purposes of
13 clarification, a dollar store shall include, by way of
14 illustrative example, without limitation -- important -- the
15 following business operations: one, 99 Cents only; two,
16 Dollar Tree; and three, Dollar General.

17 Doesn't provide any definition. It doesn't say
18 dollar amount of sale, their items, what they are or what
19 they're not. (Inaudible) counsel goes on and really
20 highlights the second half of that paragraph about the
21 closeout store definition.

22 But Your Honor, that's completely unrelated.
23 We'll look at that now. It says further, "a closeout store"
24 shall not include any branded or private label fashion
25 apparel, including footwear, outlet closeout stores, such

1 stores to include, by way of illustrative example, without
2 limitation the following business operations: Talbot's
3 Outlet, Nine West outlet, Nordstrom Rack, TJ Maxx, and Ross
4 Dress For Less.

5 This is a completely unrelated issue to a discount
6 dollar type store, Your Honor. That's about outlet selling
7 clothes. It then ends the paragraph with the parties
8 acknowledge and agree that branded or private label fashion
9 apparel, including footwear, outlet closeout stores, shall
10 not be deemed a competing business.

11 So that second half of that paragraph is talking
12 about clothing outlet stores not being a violation if a
13 Talbot's were to move in. Importantly, Your Honor, nowhere
14 in there does it say a closeout store is prohibited or what
15 the definition of a closeout store even is.

16 So the landlord is drawing a distinction without a
17 difference in this paragraph because it doesn't say thou
18 shalt not lease to this type of entity. Further, Your Honor,
19 the limited evidence we were able to get in today shows that
20 with Dollar General is not a store that sells things for
21 \$0.99. They sell things for \$70. They sell electronics,
22 they sell outdoor tools, they sell appliances, fans, those
23 sorts of things. No wonder the industry groups them
24 together. Thanks, Your Honor.

25 THE COURT: Mr. Young.

1 MR. YOUNG: Your Honor, I'll try to be quite
2 brief. I'm going to address Ollie's points first. It's a
3 fundamental misreading. It also seeks to displace the entire
4 use provisions and the argument under 365 part D if we read
5 it his way.

6 There's clearly a distinction between closeout
7 stores, and as was admitted, Exhibit 4, Ollie's own website
8 holds itself out as a closeout store. That's why it's
9 competing business with Big Lots. That's why it was
10 expressly put in there.

11 In fact, it states here, Ollie's -- quoting from
12 this exhibit -- Ollie's is America's largest retailer of
13 closeout merchandise and excess inventory. Moreover, Your
14 Honor, the statement of assurances reference closed out
15 store, used that language in those terms more than 37 times.
16 Not once did it describe itself as a dollar store.

17 I think we can dance around about the lack of
18 clarity as to dollar store and closeout, but there's clearly
19 a distinction. There's clearly a distinction between
20 closeout store and dollar store and dollar store over 10,000
21 square feet. But I'm shifting now to debtor's argument.

22 Debtor's argument wants us -- first of all, it's a
23 misreading of Coker v. Coker. Coker v. Coker was talking
24 about a display section and earlier in the document of
25 paragraph five followed by paragraph eight later down.

1 That language comes into play whenever you've
2 already made a determination. And I can provide an
3 additional briefing on canons of construction in Texas with
4 respect to when things are determined ambiguous or not and
5 when would use that doctrine.

6 But the point is, you don't need to here, because
7 on its plain terms, it says in addition to -- Meriam
8 Dictionary describes addition, a part added to the foregoing,
9 foregoing, the listed mention without limitation. Without
10 any limitation. We don't care if it's a closeout store, a
11 dollar store, whatever. Ollie's will not be permitted here.
12 That's unequivocal.

13 And the misreading of -- the fundamental
14 misreading of debtor's counsel on this is they want you to
15 focus on that -- say that it renders superfluous except for
16 tenants. Well, there were other tenants besides the 99 Cents
17 Store. That language is not superfluous.

18 We have specific prevailing over general because
19 otherwise you're reading out the entire 99 Cents exception.
20 Why would we need a 99 Cents exception? Big Lots came in,
21 they knew 99 Cents was there. They saw this language. Hey,
22 99 Cents can assign to everybody.

23 Well, that's not the case. Otherwise you wouldn't
24 need a 99 Cents exception. It was understood that you could
25 have a dollar store. You could even have a dollar store over

1 10,000 square feet. But you couldn't have more than one.
2 And you couldn't have a closeout store. And that's secondary
3 to the fact that without limitation, Ollie's Bargain Outlet
4 is in that mix.

5 So, Your Honor, while they repeatedly told us that
6 American National is misreading the contract, at best, we've
7 got an ambiguity here because their reading would simply
8 negate the need for a 99 Cents exception.

9 THE COURT: What do you make of the debtor's
10 counsel's argument with respect to the first sentence, the so
11 long as sentence and the effective date of the lease?

12 MR. YOUNG: You know, Your Honor, there --
13 frequently tenants sublet or assign and make assignments. Is
14 that the argument you're referring to, Your Honor?

15 THE COURT: Yes.

16 MR. YOUNG: Frequently assignments are made where
17 the tenant, by matter of law, is the paramount or holder of
18 that leasehold interest and the successors and assigns that
19 were present at that time, maybe somebody other than who
20 still holds that tenancy.

21 So I think it was clear that that language is
22 referring to tenants and their successors and assigns at that
23 time. You know, by analogy, not perfect, but, for example,
24 Weingarten, you know, was the party here. But American
25 National now holds that interest.

1 Our thought would be there may be an existing
2 tenant that, we'll just use Super Ten here -- well, it
3 obviously wouldn't be Super Ten. That's expressly excluded.
4 I'll use Dollar General.

5 Dollar General may have been present. They
6 already knew they were there, but they had assigned it to,
7 let's say, another dollar store. You know, dollar store.
8 I'll just call it Dollar Store. They were there instead, but
9 it's still the tenant holder. Maybe they had sublet. And
10 the tenant holder was still Dollar Store.

11 So I don't think it -- I don't think it renders
12 that language superfluous. And again, to read it that way
13 would render the 99 Cents exception entirely superfluous.
14 There'd be no need for that language. And to read it the way
15 Ollie's counsel suggests would require no distinction between
16 closeout stores and dollar stores.

17 THE COURT: Thank you, Mr. Young.

18 MR. LEBLANC: Your Honor, I think where counsel is
19 struggling is because the argument is just wrong. If you
20 look at this language, except for tenants and their
21 successors and assigns, he even said it. If you see there's
22 a Dollar General there, that's the tenant. The tenant is not
23 a defined term. There's a defined term tenant that begins so
24 long as tenant defined term. That is Big Lots.

25 When you get subsequent to the except for tenants,

1 that is an undefined term. And to be clear, a sublease is
2 not an assignment. That's a sublease. That's something
3 different. So what does this permit? So tenants and their
4 successors and assigns.

5 And Your Honor, we were a tenant at the time -- we
6 were open and operating for business in the shopping center
7 as of the effective date of this lease. That means that it
8 covers us, and it covers our successors, and it covers our
9 assigns and Ollie's, if Your Honor allows the order to be
10 entered, will be our assignee of that lease. I think that's
11 crystal clear, Your Honor.

12 Now, let's talk -- the 99 Cents exception. He
13 says we're rendering that surplusage. Well, I disagree with
14 that, Your Honor. The first provision A does deal with a
15 assignments -- assignment leases or subleases of its premises
16 to a dollar store. That does deal with 99 Cents. That may
17 be -- that may be something that is unnecessary because you
18 already can assign pursuant to the first paragraph.

19 But that doesn't matter because if you look at the
20 next provision, B, this is what I was talking about, Your
21 Honor. This is a contract between the landlord and the
22 tenant. If 99 Cents Only store vacates its premises and the
23 landlord subsequently leases such premises to a dollar store,
24 a replacement dollar store, then in any event.

25 So what it means, Your Honor, what the 99 Cents

1 exception means is there was a tenancy in this building. I
2 think it's 25,000 square feet, although that's -- I'm not
3 sure that's in the record, but it was an amount that the
4 landlord always had the ability to put a dollar store into,
5 even if we left, and it was the one leasing it. That doesn't
6 say anything about our ability or any limitation on our
7 ability to lease this to Ollie's in this instance, Your
8 Honor.

9 So I just think it's a misreading of the
10 agreement. There's no rational reason -- because if you
11 accept the premise that only -- that successors had to be
12 operating -- open and operating the business, and assignees
13 had to be operating the business, then you've rendered that
14 surplusage because they would be tenants at the time. And
15 that's not the limitation. That's just a misreading of it.

16 I think the good news for Big Lots -- or I'm sorry
17 for American National, is that we don't believe, and I think
18 Your Honor can find that they're not going to be in breach.
19 That is not violative. The assignment of this lease does not
20 violate the Big Lots lease. And I think Your Honor should so
21 find. Thank you, Your Honor.

22 MR. YOUNG: Just one quick note. Counsel still
23 hasn't addressed in addition to. And you know, you render
24 that superfluous too. In addition to -- and then it
25 expressly provides. It doesn't matter what preceded.

1 Whatever you've said, as a competing business, it's fine.
2 But on top of that language, Ollie's is a competing business.
3 Now, I don't -- you know, if contracts were so
4 clear as counsel might suggest, I guess we would be out of
5 the job. But I just -- you're reading out completely in
6 addition to the forego foregoing. And I don't -- I think
7 it's very clear that the parties never intended an Ollie's --
8 Big Lots and American National never intended an Ollie's
9 Bargain to go in there, whether it was as a result of an
10 assignment from an existing tenant or not. They expressly
11 put that in there.

12 And this isn't the case of some non-exhaustive
13 list, you know, in addition to what you said. This is
14 clearly in addition, no matter what, without limitation,
15 these things are competing businesses. And Ollie's is named.
16 I don't see how you get around that. Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Young. Yes, please.

18 MR. LEBLANC: Let me try to step through it very,
19 very slowly. So, in addition to -- so let's just read more.
20 In addition to the foregoing, a competing business shall
21 include. Okay, pausing there. So what is that? What does
22 the in addition to the foregoing mean?

23 Well, what's in the foregoing? The foregoing says
24 no dollar store operation in excess of 10,000 square feet if
25 floor area or closeout store. And that is defined as a

1 defined term, competing business.

2 So in addition to the foregoing, a competing
3 business shall include necessarily means that in addition to
4 the general description of no dollar store operation in
5 excess of 10,000 square feet of floor area or closeout store,
6 that these parties to this agreement are adding some specific
7 names to that list of what constitutes a competing business.

8 I don't think there's any lack of clarity. The
9 problem for counsel is that makes zero difference in the
10 analysis of this because we are not -- that's not a
11 limitation that applies to us. The limitation that applies
12 to us -- or I should say that limitation doesn't apply to us
13 because we were a tenant open and operating for business in
14 the shopping center as of the effective date of the lease.

15 If Your Honor permits the assignment of the lease
16 to Ollie's, then they are an assignee of a tenant open and
17 operating for business in the shopping center as of the
18 effective date of this lease. Therefore, the rest of it
19 doesn't matter.

20 To make that point even clearer, if you go down
21 later, the parties agree, and this is what counsel for
22 Ollie's mentioned, that notwithstanding the foregoing, the
23 parties acknowledge that 99 Cents is an existing tenant in
24 the shopping center whose premises operate, I'm sorry, occupy
25 more than 10,000 square feet.

1 So if they are an assignee of us, then the rest of
2 that first sentence is not implicated. And that's our point,
3 Your Honor. And if you read it differently, then you are
4 rendering surplusage, and you are ignoring the parenthetical
5 that says and their successors and assigns. And that's
6 where, Your Honor, we think it's simply wrong.

7 THE COURT: You would just read out of the
8 agreement in your analysis, in addition to the foregoing?

9 MR. LEBLANC: We're not reading it out, Your
10 Honor. The addition -- look -- the question is what does in
11 addition to the foregoing do? In addition to the foregoing
12 does not add any words to what is prohibited. What it adds
13 is it adds names to what constitutes competing businesses.
14 But the question is, and so what does that mean?

15 THE COURT: It identifies your competing
16 businesses, correct?

17 MR. LEBLANC: I'm sorry, Your Honor.

18 THE COURT: And so how do you reconcile that with
19 the first sentence?

20 MR. LEBLANC: Right, Your Honor, what I would say
21 is that means that if the landlord wanted to lease the space
22 to somebody else, it could not do so if that person was
23 defined as a competing business.

24 So if the landlord wanted to lease this space to
25 Ollie's and the 99 Cents exception did not apply, that's the

1 argument that my colleague made, then the landlord could not
2 do that.

3 The problem with their argument, Your Honor, is
4 the first sentence, the provision that I am so focused on, is
5 an exception to the ability -- to the inability of the
6 landlord to lease it to a competing business. It says, so
7 long as tenant is open and operating its business in the
8 devised premises for the initial permitted use, that is, so
9 long as Big Lots is there except for tenants, and tenants
10 therefore means 99 Cents store.

11 We all acknowledge 99 Cents store is a tenant open
12 and operating for business in the shopping center as of the
13 effective date -- and their successors and assigns. We are
14 asking the Court to authorize us to assign it to Ollie's.

15 So that means we fall into the exception that
16 permits a competing business. There is no preclusion for a
17 competing business when it is an assignee of us for that
18 reason.

19 So what you -- you can't alight over the
20 exception. And that's the point, Your Honor, is the
21 exception. It doesn't swallow the rule because, critically,
22 the landlord agreed with its tenant that it could not put a
23 competing business in. And the in addition to the foregoing
24 language makes crystal clear that if the landlord had -- if
25 we handed this space back to them and the landlord wanted to

1 lease it to Ollie's, they agreed they couldn't do that.

2 Unless, again, Ollie's meet -- if Ollie's meets the 99 Cents
3 exception that comes later, then they can.

4 But because Ollie's is specifically defined there,
5 I think that would be a hard argument for the landlord to
6 make. But it does not preclude us from assigning because we
7 were open and in operation there at the time of the 99 -- of
8 the Big Lots lease. That's our point, Your Honor, is you
9 have to read that exception and all of the words of that
10 exception, and we fit squarely into the exception.

11 MR. YOUNG: Just very briefly, Your Honor.

12 THE COURT: Yes, go ahead, Mr. Young.

13 MR. YOUNG: Counsel -- or debtor's missed the
14 salient point. They're asking you to read out of this
15 essentially three things, and they say this exception
16 excludes them and precludes the enforcement of the second
17 sentence.

18 And I will be the first to say that I don't find
19 most leases crystal clear on anything. But I'll say this.
20 What is clear here is that the parties intended that Ollie's
21 would never be in that shopping center. And that's made
22 clear by this point. Here's the first language they want to
23 read out: in addition to the forgot.

24 The second language they want to read out is
25 without limitation. So in other words, without no dollar

1 store in excess of 10,000 square feet, without closeout
2 store, without the exception provided for tenants, without
3 limitation, the parties understood, hey, Ollie's is not
4 coming in here. That's express language, and you're
5 rendering -- counsel is seeking or rather debtors are seeking
6 to render that language a nullity if it's determined
7 otherwise. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. LEBLANC: Your Honor, without limitation is
10 the grammatical equivalent of including but not limited to.
11 The second sentence is not an operative sentence. It doesn't
12 preclude anything. It clarifies the definition that is
13 created in the preceding sentence.

14 So in addition to the foregoing, competing
15 business shall include without limitation the following
16 business operations. What I suspect the parties intended,
17 although in fairness, no one, including their witness knows,
18 is that including but not limited to the following specific
19 entities, those are competing businesses. To which I say,
20 fine. I'm not ignoring that in the least bit.

21 What does it matter if it's a competing business?
22 It matters so long as the tenant, capital T, is open and
23 operating its business in the demised premises. No dollar
24 store operation -- well, let me just use the defined term.

25 So long as the tenant is operating, no competing

1 business might be permitted in the shopping center except for
2 tenants and their successors and assigns open and operating
3 for business in the shopping center as of the effective date
4 of this lease.

5 THE COURT: Tenants with a small T.

6 MR. LEBLANC: Tenants with a small T. And
7 successors -- and their successors and assignments. And if
8 you grant the motion, Ollie's will be our successor. We were
9 and continue to be a tenant operating in the business,
10 operating for business in the shopping center as the
11 effective date of this lease.

12 So the paragraph -- sentence two of this paragraph
13 is not operative. I'm not ignoring it. Without limitation
14 has no special purpose. It just means including but not
15 limited to these specific ones. And in addition to the
16 foregoing just says, in addition to that very limited
17 definition that precedes this, these are also competing
18 businesses.

19 And I say I don't care what the definition of
20 competing businesses is because if we fit in the exception,
21 then it doesn't matter. Because -- and we fit in the
22 exception because except for tenants and their successors and
23 assigns. That's what Ollie's would be if Your Honor grants
24 the motion.

25 MR. YOUNG: I'm not ignoring it. It's not

1 operative.

2 THE COURT: I'm going to allow you gentlemen to
3 agree to disagree. I don't think that -- I don't expect
4 we'll take a lunch break and you'll resolve this.

5 So with that said -- well, let me ask. So parties
6 finish their arguments?

7 MR. LUCIAN: With respect to this issue I think
8 you're asking me, Your Honor?

9 THE COURT: Yeah.

10 MR. LEBLANC: I certainly have.

11 THE COURT: Mr. Young, you're complete?

12 MR. YOUNG: Yeah, I think we've --

13 THE COURT: I understand your arguments. Why
14 don't we --

15 MALE VOICE: (Inaudible).

16 THE COURT: Why don't we take a break and resume
17 this after lunch? So why don't we take a break until quarter
18 till 2:00? Okay. So we'll resume back at 1:45 and proceed
19 onward. Okay, thank you. We stand in recess.

20 (Recess taken at 12:26 p.m.)

21 (Proceedings resumed at 1:50 p.m.)

22 THE COURT: Thank you, everyone. Please be
23 seated. We're back on the record in Number Holdings.

24 First of all, Counsel, let me thank you for your
25 thoughtful arguments this afternoon. I also want to thank

1 you for giving me some time to digest your presentations from
2 this morning.

3 The current dispute is between the debtor and the
4 landlord American National Insurance regarding a shopping
5 center lease in Conroe, Texas. The landlord asserts that the
6 assignment of the lease to Ollie's will disrupt the tenant
7 mix of the shopping center, and would cause a breach of the
8 landlord's lease with Big Lots under Section 365(b)(3) and
9 (b)(4).

10 The Third Circuit has held in Joshua Slocum, even
11 under the tightly-drawn definition of adequate assurance, in
12 the shopping center context, Congress did not envision
13 literal compliance with all lease provisions; however,
14 insubstantial disruptions in tenant mix, and other
15 insubstantial breaches in other leases and agreements, are
16 contemplated and allowed.

17 With that being said, here the lease between the
18 landlord and Big Lots states, so long as the tenant, Big
19 Lots, is open and operating its business in the demised
20 premise for the initial permitted use, except for tenants,
21 which would here include 99 Cents, and their successors and
22 assigns open and operating for business in a shopping center
23 as of the effective date of this lease, meaning the Big Lots
24 lease, no Dollar Store operation in excess of 10,000 square
25 feet of floor area or closeout store, a competing business,

1 may be permitted in the shopping center during the original
2 term of this lease, or any operation terms or extension
3 thereof.

4 The lease then specifically names Ollie's as a
5 competing business.

6 Here, 99 Cents was open and operating at the time
7 Big Lots entered into the lease with the landlord.
8 Additionally, the proposed sale to Ollie's would result in
9 Ollie's being a successor and assignee of 99 Cents.

10 Consequently, this proposed assignment to Ollie's does not
11 violate the use restriction in the Big Lots lease.

12 Although the Court agrees, if the leased premise
13 was returned to the landlord, the landlord could not lease
14 the premise to Ollie's without violating the use restriction,
15 here the debtors fall under the exception of successors and
16 assigns in the first sentence of the paragraph. The lease
17 specifically permits 99 cents to have successors and assigns,
18 and there's no limiting language on who 99 Cents can assign
19 to, despite other provisions within the lease applicable in
20 other circumstances imposing restrictions on tenant mix.

21 Whether Ollie's is a dollar store akin to Dollar Tree or
22 Dollar General is an issue the Court does not need to address
23 because of this Court's interpretation of Section 4(a) of the
24 Big Lots lease. Additionally, the Court is without
25 sufficient evidence to make that finding.

1 So I would ask the parties to please confer and
2 submit a form of order under certification of counsel. I
3 would ask that you please circulate the proposed order to Mr.
4 Young, Ms. Sierra-Fox, the committee, and the lenders prior
5 to its submission.

6
7 MR. LEBLANC: Your Honor, we -- Andrew LeBlanc of
8 Milbank -- we will absolutely do so.

9 THE COURT: Okay. So, with that, could we move on
10 to the other sale --

11 MR. LEBLANC: Yes.

12 THE COURT: -- on the --

13 MR. LEBLANC: And, with that, you get the pleasure
14 of not having to hear from me anymore, and I'll turn the
15 podium over to Mr. Kinney, Your Honor.

16 THE COURT: Okay. Thank you.

17 MR. MINTZ: Apologies, Your Honor, Joe Mintz,
18 counsel for Ollie's.

19 THE COURT: Yes.

20 MR. MINTZ: I wanted to read into the record the
21 terms of a settlement reached with the North Oaks landlord --

22 THE COURT: Okay.

23 MR. MINTZ: -- who had objected to the Ollie's
24 sale.

25 THE COURT: Okay, I assumed we were going back to

1 the actual Ollie's order. So you're going to do a separate
2 order with respect to American National, right?

3 MR. LEBLANC: That's correct, Your Honor. And
4 what we'll do is we're going to submit a separate order with
5 respect to American National and an order that covers the
6 other, I think it will be ten properties, three owned and
7 seven leased.

8 THE COURT: Okay.

9 MR. LEBLANC: And we'll have an APA -- I think
10 what we've agreed is, we'll have an APA separate for the
11 American National lease and a separate one for the others.

12 THE COURT: Okay.

13 MR. LEBLANC: And so that's -- we'll do that and
14 we'll do that under --

15 THE COURT: Okay.

16 MR. LEBLANC: -- certification of counsel, but
17 what Counsel is talking about is this is the -- this relates
18 to the other side.

19 THE COURT: Right, and so we are going to hear
20 anyone who wants to be heard with respect to this before I
21 make a ruling as to the other leases.

22 MR. LEBLANC: Thank you, Your Honor. And what
23 Ollie's' counsel here is doing is just talking about an
24 agreement to resolve one of the objections that was filed, so
25 that -- that they've reached with them that withdraws --

1 THE COURT: Mr. Meloro's objection?

2 MR. LEBLANC: Yes.

3 THE COURT: Yes. Okay.

4 MR. YOUNG: Your Honor, Mr. Young for American
5 National.

6 THE COURT: Yes.

7 MR. YOUNG: Might Mr. Webb be released at this
8 point then --

9 THE COURT: Yes, certainly --

10 MR. YOUNG: -- since you've made your --

11 THE COURT: -- he is released, and, Mr. Young, you
12 also may be released, if you like.

13 MR. YOUNG: All right. Thank you, Your Honor.

14 THE COURT: Thank you. And, Mr. Webb --

15 MR. YOUNG: And thank you for allowing us --

16 THE COURT: -- thank you for your time today, I
17 appreciate it.

18 MR. YOUNG: Yes. Thank you for allowing us to
19 appear remotely.

20 MR. WEBB: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. MINTZ: Good afternoon, Your Honor, again, Joe
23 Mintz on behalf of Ollie's, and I just wanted to read into
24 the record the terms of a settlement that was reached with
25 the North Oaks landlord.

1 North Oaks objected on adequate assurance grounds,
2 and the parties agreed to resolve the objection as follows.
3 The objection was obviously withdrawn, Your Honor. No
4 security deposit or guarantee will be required from Ollie's,
5 and the landlord will not enforce its right of first refusal.
6 The parties have agreed in principle to certain modifications
7 of the applicable lease addendum and will work to enter into
8 a modification of the addendum within 30 days of closing.
9 And, if you'll permit me, Your Honor, the addendum shall be
10 modified as follows.

11 Paragraph 11-1 of the addendum will be amended and
12 restated as follows to read, "whose primary business will be
13 a general merchandise closeout retail store."

14 Paragraph 15 of the addendum, pursuant to use
15 restrictions, the parties have agreed to delete items 2, 5,
16 6, 7, and 13 of the first part of that paragraph. Paragraph
17 15, use restrictions, item 11 will remain with the
18 modification that the removal of the words banquet hall and
19 bar --

20 THE COURT: And what?

21 MR. MINTZ: Banquet hall and bar.

22 THE COURT: Oh, bar, b-a-r?

23 MR. MINTZ: B-a-r. And the addition of the
24 language, "to the extent that any such businesses share a
25 demising wall with the premises on any side."

1 And paragraph 15, use restrictions, the second
2 part of that paragraph, the parties have agreed to delete
3 paragraphs 4, 5, and 6.

4 THE COURT: Okay.

5 MR. MINTZ: Thank you, Your Honor.

6 THE COURT: Okay. Did anyone else wish to be
7 heard with respect to the Ollie's lease, or with respect to
8 the proposed form of order?

9 Now, I understand, is there a new order with
10 respect to the Ollie's leases and, if so, do you have a copy
11 of it?

12 MR. KINNEY: Your Honor, Brian Kinney from
13 Milbank. We do not currently have a copy of the order. We
14 have basically to (indiscernible) out the existing order into
15 two --

16 THE COURT: Okay.

17 MR. KINNEY: -- and one will cover everything
18 except for the American National lease and one just covering
19 the American National lease. And we will -- as Mr. LeBlanc
20 said, we will circulate both of those to all the parties and
21 then submit it on COC.

22 THE COURT: Okay. So what was the last order you
23 were operating under, was it 667? That was filed today, so
24 that must be the one.

25 COUNSEL: Yes.

1 THE COURT: Okay.

2 MR. KINNEY: Yes, Your Honor. Sorry, I left my
3 agenda at the desk, so I didn't have --

4 THE COURT: No, it's okay.

5 MR. KINNEY: -- the number in front of me. Yes,
6 667.

7 THE COURT: Okay. Well, I'm going to ask on the
8 record, just in an abundance of caution, is there anyone who
9 wanted to be heard with respect to Ollie's other than
10 American National, or has any comments on the proposed form
11 of order that is intended to be modified?

12 MS. SIERRA-FOX: Good afternoon, Your Honor, Rosa
13 Sierra-Fox on behalf of the U.S. Trustee. So while I was
14 sitting, listening to the presentation, I did have to make
15 some comments to all of the orders, and I think some of them
16 carry throughout. So I don't know what the best way -- I
17 don't think they're necessarily objections, but they could
18 be, I don't know, if the parties have an issue with the
19 comments. So I don't know what the best way to proceed with
20 that is.

21 MR. KINNEY: Your Honor, Brian Kinney from
22 Milbank. If I could suggest, we'll go through those comments
23 immediately after this hearing, Your Honor, and we will
24 obviously circulate the orders to Ms. Sierra-Fox. If we
25 cannot -- if there's any that we cannot agree on, we would

1 seek to --

2 MS. SIERRA-FOX: The accompanying (indiscernible)
3 --

4 MR. KINNEY: Yeah, exactly, we would COC both the
5 competing language for Your Honor, but I can't imagine there
6 would be anything that we'd be unable to resolve, Your Honor.

7 THE COURT: Okay.

8 MS. SIERRA-FOX: That sounds good to the U.S.
9 Trustee, Your Honor, if that's good for you.

10 THE COURT: Okay. I have some comments on the
11 order, but, first of all, let me ask if there was anyone
12 else.

13 (No verbal response)

14 THE COURT: Okay. And let me just note for the
15 record that I'm prepared to approve the Ollie's sale with
16 respect to everyone except American, which will be a separate
17 order. I'm satisfied that the sale constitutes a reasonable
18 exercise of the debtors' business judgment and yields maximum
19 value for the debtors' estates.

20 And I'm basing that on the Shin declaration at
21 Docket 671 in support of the sale. That declaration makes
22 clear the debtors and their advisers engaged in a robust
23 auction process; the sale provided a full, fair, and
24 reasonable opportunity for parties to be heard and make
25 higher and better offers; and the debtors, in their business

1 judgment, determined that the stalking horse bid was the
2 highest or otherwise best bid. The purchaser is a good faith
3 purchaser entitled to the protections of Section 363(m), and
4 the debtors have a sound justification for promptly
5 consummating this sale.

6 So I will approve -- well, let me put it this way,
7 I'll approve the sale and I will review the proposed form of
8 order when I receive it.

9 I had some comments on the order, but I need to
10 find my comments. I'm working off of too many copies. Bear
11 with me a second.

12 (Pause)

13 THE COURT: One universal comment that I have is
14 -- and I'm looking at paragraph 4 -- all these orders have
15 the Court approving the APAs and some of these sales I don't
16 even have the APAs. And I can tell you, since they were
17 filed at 5:00 p.m. yesterday, I haven't reviewed every APA.
18 So I would ask that you strike the first sentence and just
19 leave it where the sellers are authorized to execute and
20 deliver. You're authorized to enter into these transactions,
21 but I'm not going to approve each document as I haven't seen
22 them or studied them.

23 And, again, I would ask the comment about FF&E, so
24 to include that in this, which is also at paragraph 4.

25 Bear with me a second, I don't have the correct

1 copy of the Ollie's lease that I wrote on -- I mean order.

2 (Pause)

3 THE COURT: My apologies, Mr. Kinney.

4 MR. KINNEY: No problem at all, Your Honor. We
5 understand it's been a lot of paper.

6 THE COURT: Well, and I really try to keep up with
7 your paper, but at some point I just start writing on your
8 paper, they're in different binders. I think I had very few
9 comments, but I want to make sure I got them all because I
10 don't want to have to reach back out to parties once you --
11 so, in 4, you got the striking on the first sentence, and
12 then --

13 MR. KINNEY: (Indiscernible) --

14 THE COURT: Right.

15 (Pause)

16 THE COURT: I think that was it. I think those
17 were my comments. Of course, I'll be very interested in
18 comments the United States Trustee has. Many of my comments
19 had to do with the evidence, which you incorporated.

20 (Pause)

21 MR. MINTZ: Your Honor, I just want to clarify one
22 thing. Again, for the record, Joe Mintz on behalf of
23 Ollie's. I just want to clarify something that was suggested
24 previously. The parties signed the Ollie's APA that was
25 appended to the stalking horse motion and attached as an

1 exhibit to the proposed order.

2 THE COURT: Right.

3 MR. MINTZ: Since that agreement has already been
4 signed, it's our preference to use the two orders, like
5 Counsel indicated before, and have each order modify in
6 certain limited respects the existing asset purchase
7 agreement. So we're not going to sign two separate APAs, one
8 to address the ten properties and another to address the one
9 property with respect to American National. I just wanted to
10 make that one clarification.

11 THE COURT: Okay.

12 MR. MINTZ: Okay?

13 THE COURT: I understand.

14 MR. MINTZ: Thank you.

15 THE COURT: It's probably less confusing.

16 MR. MINTZ: It is.

17 THE COURT: Too much paper, you can't find things.

18 (Pause)

19 MR. KINNEY: Your Honor, I think that brings us to
20 the conclusion of the Ollie's portion of the sale motion,
21 unless -- unless anyone -- you don't? Okay. I just wanted
22 to make sure.

23 THE COURT: I think I asked three times, so -- I
24 try to be cautious about that.

25 MR. KINNEY: Your Honor, next we would propose

1 taking up --

2 THE COURT: Oh, wait.

3 MR. MINTZ: May we be excused, Your Honor, for
4 Ollie's --

5 THE COURT: Certainly. Yes, thank you.

6 MR. MINTZ: Thank you, Your Honor.

7 THE COURT: Anyone else who wants to leave, you're
8 more than welcome.

9 (Laughter)

10 THE COURT: But you're also welcome to be here. I
11 didn't mean it that way.

12 (Laughter)

13 MR. KINNEY: Thank you, Your Honor.

14 THE COURT: You're always welcome to our
15 courtroom, it is always open.

16 MR. KINNEY: The next piece of this sale process
17 that we'd like to present, Your Honor, is the sale of the
18 debtors' own real property. And, Your Honor, this was
19 pursuant to a notice of successful bidder filed at Docket
20 Number 641, and the form of order, the proposed form of order
21 was filed at Docket 649.

22 Your Honor, with respect to these assets, again,
23 these were debtors' own real property that result -- that
24 were included in the assets, subject to the bidding
25 procedures. With respect to the owned real property, the

1 conclusion of the auction, outside of the owned real property
2 that was just approved to be sold to Ollie's pursuant to
3 their stalking horse bid, there were 28 purchasers for the
4 remaining 41 parcels of owned real property.

5 And in the aggregate --

6 THE COURT: So 28 out of the 41?

7 MR. KINNEY: So 28 buyers --

8 THE COURT: Okay.

9 MR. KINNEY: -- for 41 properties. Certain buyers
10 wanted multiple properties --

11 THE COURT: Gotcha.

12 MR. KINNEY: And, in the aggregate, these netted
13 over \$130 million in proceeds to the estates.

14 Your Honor, based on the testimony contained in
15 the Shin declaration, we believe that we've demonstrated that
16 this is -- that these are, by far, in the best interest of
17 the estate, these are the highest and best offers available
18 for these properties, and that the debtors have exercised
19 their sound business judgment in agreeing to sell these
20 assets to the successful bidders on the terms set forth in
21 the proposed order. As such, we would ask the Court to
22 approve the sales, subject to any comments that Your Honor or
23 anyone else may have with respect to the order.

24 And just to be clear on the record, we are
25 agreeing, again, that we will review the comments from the

1 Office of the U.S. Trustee and, subsequent to this hearing,
2 in the event Your Honor is inclined to approve -- to grant
3 the relief requested, that we would circulate a revised order
4 under COC, assuming that we get to agreement on all the
5 comments and to not submit any disagreement to Your Honor
6 under COC as well.

7 THE COURT: Okay. So, I note this motion is
8 uncontested. Does anyone want to be heard with respect to
9 the motion, Docket 641 -- well, that's the list of successful
10 bidders -- or the proposed form of order? Ms. Thomas?

11 MS. THOMAS: Your Honor, may I be heard?

12 THE COURT: Yes.

13 MS. THOMAS: Your Honor, for the record, Alexandra
14 Thomas with Choate, Hall & Stewart on behalf of BioLife
15 Plasma, LP. BioLife is the tenant under Store Lease 137,
16 which is located in Victorville, California. And, to be
17 clear, BioLife does not object to the proposed sale to RCB
18 Equities; however, to date, our client has not received any
19 written notice of assumption or assignment of their lease.
20 We've reviewed the notices of assumption and assignment filed
21 on the docket and our lease hasn't been included. So we
22 would just ask that the debtors provide notice of the cure
23 costs and any adequate assurance that RCB Equities plans to
24 provide in connection with the assumption and assignment of
25 Lease 137.

1 MR. KINNEY: Thank you. Your Honor, to the extent
2 that we -- so --

3 THE COURT: Is Lease 137 included?

4 (Pause)

5 MS. THOMAS: And, Your Honor, if it's helpful, I'm
6 referring to Docket 641 at Schedule 1, and it's the lease
7 that's listed 12480A Amargosa Road.

8 THE COURT: Thank you, Ms. Thomas.

9 (Pause)

10 THE COURT: Ms. Thomas, we're just giving debtors'
11 counsel a moment to get the document.

12 MS. THOMAS: Understood.

13 MR. KINNEY: Your Honor, so this is a debtor-owned
14 property. So --

15 MS. THOMAS: Yes.

16 MR. KINNEY: -- Ms. Thomas's client is the tenant
17 in this property. So, if anything, they owe rent to the
18 estate, but we are happy to -- to the extent there is an
19 assumption and assignment of that lease, which I don't
20 believe has been noticed to date, if that is in fact noticed,
21 we will obviously submit any cure information, to the extent
22 applicable, but I don't believe that's ripe for today.

23 THE COURT: Do you -- has that satisfied your
24 inquiry, Ms. Thomas?

25 MS. THOMAS: Yes. We just wanted to confirm that

1 to the extent there are any adequate assurance objections or
2 cure objections that the deadlines haven't run yet and that
3 we would receive notice of the assumption and assignment
4 before those deadlines passed.

5 MR. KINNEY: To the extent that there's a proposed
6 assumption and assignment, there would be a period to get to
7 vote any proposed cure, as well as any proposed adequate
8 assurances.

9 THE COURT: And I'm sure, if you have further
10 inquiry, you can reach out to Mr. Kinney.

11 MR. KINNEY: Yes, yes.

12 THE COURT: Okay. Thank you, Ms. Thomas.

13 Is there anyone else who wishes to be heard with
14 respect to the debtor properties, the sale of the debtors'
15 property, or the proposed form of order?

16 (No verbal response)

17 THE COURT: Okay, I hear no one; I see no hands on
18 Zoom.

19 Again, based on the record that has been made and
20 the resolution of all objections, I'm prepared to approve
21 this sale as well.

22 This is an uncontested sale of debtors'
23 properties, as identified at Docket 641, to the successful
24 bidders, and identified in the schedules attached to the
25 notice of successful bidders. I'm satisfied, based on the

1 Shin declaration, that there was a robust auction, that the
2 sale provided a full and fair opportunity for parties to make
3 higher or otherwise better offers to purchase the property,
4 and I will enter the order when it's submitted.

5 I do have a couple of comments on the form of
6 order. I want to make sure I have the right order, sorry.

7 (Pause)

8 THE COURT: Many of these are just clean-up
9 comments in the introductory paragraph, the declaration
10 relied on docket numbers, that type of thing, but I do have a
11 question, this is more substantive, in (e), paragraph (e),
12 line 1, you need to strike "non-appealable."

13 MR. KINNEY: Yes.

14 THE COURT: Obviously, it's appealable, I don't --
15 it's successful, but it's appealable.

16 And (f), you're missing a docket number.

17 On page 8 -- I'm looking at 649-1, the blackline
18 -- or maybe it's not blackline -- it goes from paragraph (p)
19 to paragraph (a), and I think that that paragraph (a) is very
20 similar to paragraph (v). You could probably modify and
21 strike the (a).

22 MR. KINNEY: Yes.

23 THE COURT: And I'd ask that you make the
24 conforming modification to paragraph 4 about approving
25 agreements and consenting lienholders.

1 In paragraph 13, I'm looking at page 20, about
2 eight lines up from the bottom it says "each and every
3 federal, state, and local government agency" --

4 MR. KINNEY: Yes.

5 THE COURT: -- change the word directed to
6 authorized, please.

7 MR. KINNEY: Yes.

8 THE COURT: And those are my only comments to the
9 order.

10 MR. KINNEY: Thank you, Your Honor.

11 As discussed, we will make those comments. We
12 will also review the comments from the United States Trustee,
13 and submit under certificate of counsel.

14 THE COURT: Thank you. One thing I did -- I was
15 reminded to ask is to please incorporate the related-to
16 docket number in the caption of the order because a lot of
17 these are titled very similarly and we want to make sure they
18 are linked to the correct documents.

19 MR. KINNEY: We will, Your Honor, and we'll
20 include both the notice of successful bidder, as well as the
21 original sale motion itself.

22 THE COURT: Perfect. Thank you.

23 MR. KINNEY: Your Honor, that brings us to the
24 last piece of today's puzzle. Your Honor, our final piece
25 relates to the debtors' remaining leases that were not

1 subject to either the Dollar Tree designation or the Ollie's
2 stalking horse bid.

3 Your Honor, pursuant to the bidding procedures and
4 these leases, the debtor has marketed all the remaining
5 leases to buyers. At Docket Number 639 -- I'm sorry, at
6 Docket Number 664 and 639 -- I was right, sorry about that --
7 639 and 664 --

8 THE COURT: Okay.

9 MR. KINNEY: -- we filed are notice of successful
10 bidders with respect to the leased properties. The original
11 one was 639 and the amended one was done at 664.

12 And, with respect to the order, we filed a revised
13 form of proposed order at Docket Number 673, and this revised
14 -- the proposed form of order that had been filed earlier at
15 Docket Number 640.

16 Your Honor, this order and the notice of
17 successful bidders covers 13 parties, for an aggregate
18 purchase price of \$2.4 million. Again, as set forth in the
19 Shin declaration, we believe that this represents the highest
20 and best offers for these properties, and is -- the decision
21 to enter into the -- I will use the term APA, but here APA
22 means purchase agreement, assumption and assignment
23 agreement, and/or a lease termination agreement.

24 THE COURT: Have they all been filed?

25 MR. KINNEY: I believe so.

1 COUNSEL: Yes.

2 MR. KINNEY: Yes, I believe --

3 THE COURT: Okay.

4 MR. KINNEY: -- yes, they all in fact have been
5 filed.

6 THE COURT: Okay. It's a variety.

7 MR. KINNEY: It is a variety because some of the
8 (indiscernible) are actually the landlords buying back their
9 leases. And so, for those parties, we agreed they didn't
10 need to execute a full purchase agreement, we instead agreed
11 they could be based on the lease termination agreement. And
12 some of the parties, as envisioned in the procedures, chose
13 to use an assumption and assignment agreement rather than a
14 true purchase agreement.

15 So it is a medley of defined terms, as the parties
16 decided to call them, all to have the same result of
17 providing for the assumption and assignment of the lease to
18 the purchaser.

19 Your Honor, under the bidding procedures we had
20 reserved a couple of issues from today's hearing, those are
21 both cure objections and adequate assurance objections.

22 Specifically, with respect to the adequate
23 assurance, we had provided in the bidding procedures that the
24 adequate assurance deadline would not be until next week and
25 parties would have until then to object. And, obviously, if

1 an objection was lodged, we -- there is then a procedure to
2 resolve those objections.

3 We have received informal comments from counsel to
4 several landlords, including Ms. Roglen, who's here in court
5 today. On that front, we had made certain edits already to
6 the order, and that was one of the reasons behind the filing
7 of the amended form of order. We understand that Ms. Roglen
8 does not believe that that's sufficient to address her
9 issues. We would propose to make one further modification to
10 address her issue, which I believe she still believes is
11 insufficient, but we would propose to add a very clear
12 paragraph to the order that, notwithstanding anything to the
13 contrary, nothing in here -- nothing in the order prejudices
14 the ability of any landlord to make an adequate assurance --
15 timely make an adequate assurance objection in accordance
16 with the bidding procedures, and for the Court to order
17 appropriate relief if such objection is upheld.

18 So we -- because that's always been the intent,
19 Your Honor, and we believed the order did it. We acknowledge
20 it was not a model of clarity on this point. And so, in
21 order to erase any doubt as to what effect this order would
22 have on the ability of landlords to raise the appropriate
23 adequate assurance objections, is to make it expressly clear
24 and governing above all else in the order that nothing in
25 here impairs their right to make those objections, nothing in

1 the order impairs Your Honor's right to grant the appropriate
2 relief upon sustaining such an objection. And we have also
3 provided in the order and I think it's sufficient -- I'm
4 happy to add it again in another paragraph -- that we cannot
5 close any assignments of leases until either that objection
6 deadline has passed without objection or, if an objection is
7 filed, until it's resolved in the debtors' favor.

8 THE COURT: I'm sure the landlords would like to
9 be heard.

10 MR. KINNEY: I was going to say, there is one
11 other point that I would like to very quickly raise, Your
12 Honor. There's also a provision in the order with respect to
13 percentage rent, and there was an objection filed -- an
14 informal objection raised with respect to that. We're going
15 to work with the landlord there, we have two possible
16 resolutions, I think either of which may be acceptable to
17 both parties --

18 THE COURT: Are only two objecting to percentage
19 rent?

20 MR. KINNEY: I believe so. I think it's just one
21 party, if I --

22 THE COURT: Oh, okay. So it's a one-off --

23 MR. KINNEY: -- yes, but there are two possible --

24 THE COURT: -- carveout or --

25 MR. KINNEY: -- language -- that we just need to

1 discuss with the purchaser which -- and the landlord which
2 one of the two, we have two possible paths. I think, from
3 the estate, either one works, we just need to find one that
4 works for both the landlord and the purchaser. And, again,
5 we will submit that on certification of counsel once we get
6 to the -- a resolution of the matter.

7 And, with that, I will cede the podium.

8 THE COURT: Okay. Thank you.

9 MS. ROGLEN: Good afternoon, Your Honor --

10 THE COURT: Good afternoon.

11 MS. ROGLEN: -- Laura Roglen of Ballard Spahr on
12 behalf of Ramage Enterprises, which is one of the landlords
13 that was listed in the notice of successful bidder filed at
14 Docket Number 639, and it's for Store Number 435, I believe,
15 which the successful bidder for that entity is identified as
16 TBI, Inc.

17 And, Your Honor, primarily, my issue is that these
18 leases that are proposed to be assumed and assigned are in a
19 different procedural posture right now than the other orders
20 Your Honor has agreed to enter today. For the Dollar Tree
21 designation rights, that was approving the designation
22 rights, not the assumption and assignment of leases --

23 THE COURT: Right.

24 MS. ROGLEN: -- as well as the sale of other IP
25 assets to Dollar Tree. And so there were no outstanding

1 ongoing objection deadlines or anything that would interfere
2 with the assumption and assignment of leases, that's going to
3 be subject to a separate process.

4 With respect to Ollie's, that's also in a
5 different procedural posture because that was a stalking
6 horse bid and adequate assurance information was provided
7 earlier. The objection deadline had already passed, and Your
8 Honor already heard an objection and ruled on it today.

9 Now, we're here on leases where the successful
10 bidders were just identified last night and the adequate
11 assurance information was only provided last night, and
12 although there is an ongoing ability to object to that
13 adequate assurance information, the debtors are here seeking
14 entry of an order approving the assumption and assignment of
15 those leases today.

16 Now, certainly with respect to TBI, Inc. -- I of
17 course have not looked at all of the other APAs that are
18 subject to this proposed form of order, but the only thing
19 being sold here are the leases, it is only the assumption and
20 assignment of the leases. So I don't think it's appropriate
21 to enter an order today approving the assumption and
22 assignment of leases, which is the only thing that would be
23 done today, when you've already heard that the sales will not
24 and cannot close until after the further objection period
25 passes. And while some changes have been made to the order

1 to attempt to clarify that nothing cuts off landlord's
2 ability to object to adequate assurance of future
3 performance, which I think is everybody's intention here,
4 there's a lot of findings of fact and conclusions of law in
5 this order that directly relate to adequate assurance of
6 future performance, specific findings with respect to the
7 tenant's use of -- intended use of the premises, which the
8 Court has no information about that, we have no information
9 about what the intended use is.

10 And for those reasons, among others, I just am not
11 sure that entry of an order approving the assumption and
12 assignment of those leases today is appropriate and would
13 instead propose that we wait until after the expiration of
14 the May 30th objection deadline to then enter a much cleaner
15 order approving the assumption and assignment, to the extent
16 there's no objection, or, of course, if there is an objection
17 to the adequate assurance of future performance of one of the
18 assignees, then after that objection is adjudicated.

19 It's not clear to me what the procedural process
20 would be for, if the Court enters an order today approving
21 the assumption and assignment, then later there's an
22 objection that the Court were to sustain to the assumption
23 and assignment of the lease, is this order then rescinded
24 somehow, is there a subsequent order modifying it? I'm not
25 really sure how that would work because it's an unusual

1 scenario. You typically would not approve the assumption and
2 assignment of a lease before all of the objections were ruled
3 upon.

4 So that's our position today. I can of course go
5 through the order and outline all of the issues and problems
6 that we've identified with the order so far, and I'm sure we
7 could craft language around each of them, but I think the
8 better course of action would be just to hold the entry of
9 the order for today.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. HAZELTINE: Good afternoon, Your Honor, Bill
13 Hazeltine on behalf of --

14 THE COURT: Good afternoon.

15 MR. HAZELTINE: -- Mira Mesa Shopping Center,
16 which is a landlord that is purchasing back its own lease,
17 and I'll be very brief. I raised a few nits with debtors'
18 counsel last night, mostly the fact that they used
19 "purchaser" throughout the order, rather than "purchasers."
20 They have corrected some, and I've been informed that they're
21 going to go through and make the rest of the changes.

22 So, with that, we're fine with the order.

23 THE COURT: Okay. Thank you.

24 MS. TOPPER: Good afternoon, Your Honor; for the
25 record, Paige Topper with Saul Ewing on behalf of Franklin

1 Family Partnership. Franklin Family Partnership is one of
2 the landlords that debtors' counsel mentioned we were
3 discussing language in connection with the order on
4 percentage rent. Franklin Family did file an objection to
5 the assumption and assignment notice on the cure issue and
6 there is a reservation of rights on potential objection to
7 adequate assurance of future performance, we understand that
8 those are adjourned to a later date. We also understand from
9 debtors' counsel that the adequate assurance information will
10 go out today. My client hasn't received it yet, but I
11 understand that that will be coming shortly.

12 As debtors' counsel represented, we have an issue
13 with the percentage rent because we have an obligation under
14 our lease in connection with, in addition to monthly rent
15 payments, a percentage based on the gross sales, and
16 specifically the language in the order, you know, we want to
17 make sure that that obligation is paid pre-closing for 2024.

18 So I think debtors' counsel is correct that we're
19 going to continue discussing and, you know, if the Court
20 enters the order today, we'll submit revised language,
21 subject to my client's approval, under certification of
22 counsel.

23 Thank you.

24 THE COURT: Mr. Waxman?

25 MR. WAXMAN: Good afternoon, Your Honor. May it

1 please the Court, Jeff Waxman of Morris James on behalf of
2 Navins Fund, LLC. They are a landlord and purchaser of a
3 lease, Your Honor. With me today on the line is Patrick
4 Huffstickle of the Dykema law firm.

5 Your Honor, we -- first of all, I understand that
6 the lease rejection -- or lease termination agreement was not
7 docketed, but will be, is my understanding from the debtors.
8 So I just wanted to clear that up.

9 We provided certain comments and proposed form of
10 order to the debtors. I understand that most of those
11 changes that we have proposed are going to be included in the
12 exhibit which specifically identifies the lease, the
13 location, the landlord as the purchaser, as well as some of
14 the other terms in there, the lease termination. There's no
15 issue with that.

16 I do want to just put one important issue on the
17 record. As I understand, the lenders are in court today,
18 they do not oppose the proposed sale of the lease or lease
19 termination. That way, there's no issue with respect to any
20 proposed modification.

21 So, unless somebody has any comments from the
22 lenders, I think we are -- I think we're okay, Your Honor.

23 MS. VOLIN: And Megan Volin, Proskauer Rose, on
24 behalf of the DIP agent, just confirming that we have no
25 issues there.

1 THE COURT: Okay. Thank you.

2 MR. WAXMAN: Your Honor, that's our add, if I may
3 be excused?

4 THE COURT: You are excused. Thank you, Mr.
5 Waxman.

6 MR. WAXMAN: Thank you, Your Honor.

7 THE COURT: Mr. Ward?

8 MR. WARD: Good afternoon, Your Honor, Matthew
9 Ward on behalf of Burlington Coat Factory, which is a
10 purchaser of one location. Your Honor, my co-counsel from
11 the Jackson Walker firm Kristhy Peguero, is also on the
12 video.

13 Burlington Coat Factory prevailed at the auction
14 with respect to Store Number 279 in Tulare, California. We
15 have been working with the Milbank team to incorporate our
16 comments to the order. We're not quite there yet, but I'm
17 confident that we'll be able to get there. There are a few
18 open items with respect to a cure amount. We think that the
19 cure amount has been set, but to the extent, since cure
20 objections are due next week, if there's an unresolved cure
21 dispute, the way our bid is structured is we're putting in a
22 certain amount of cures and then on that the onus would be on
23 the debtors in excess of that. And so we just wanted that to
24 be incorporated. We have some language regarding use
25 restrictions and which use restrictions will be binding on us

1 in signage and the size of signage.

2 So nothing earth-shattering here that I don't
3 think we can work out, but we just wanted to reserve our
4 rights to do that. I think what debtors' counsel proposed to
5 do with the U.S. Trustee's comments, which is incorporate the
6 comments and then submit them under a certification of
7 counsel. And if for whatever reason we can't get to an
8 agreed form with the debtors, I suppose we could do competing
9 forms under certification of counsel, we're amicable to that
10 approach.

11 MR. KINNEY: Your Honor, Brian Kinney of Milbank,
12 just one correction and then one response.

13 First of all, the cure objection deadline has
14 passed. So all cure objections have been filed, it's the
15 adequate assurance --

16 MR. WARD: Okay.

17 MR. KINNEY: -- objection deadline that is next
18 week.

19 Secondly, obviously, we will work with counsel on
20 comments to the order. We will also circulate that to the
21 affected landlords to make sure that they are comfortable
22 with the proposed changes as well.

23 MR. WARD: Thank you for those clarifications.
24 So, unless my co-counsel has comments or Your Honor has
25 questions, I think that's it for Burlington.

1 THE COURT: Okay. Thank you.

2 MR. WARD: Thanks, Your Honor.

3 THE COURT: Does anyone else wish to be heard?

4 (No verbal response)

5 THE COURT: So, Mr. Kinney, welcome back. I am
6 concerned, when I read this, about timing and process, and I
7 was curious if this is one of those orders that should be
8 bifurcated because the way the timing works -- and there are
9 a lot of findings, substantial findings in this form of
10 order, and I was curious why this couldn't be addressed at
11 June 4.

12 MR. KINNEY: So, Your Honor, there's two pieces.
13 First, we do have a requirement under our DIP milestones to
14 have a form of orders entered by tomorrow and closings by the
15 end of the month.

16 The second piece of it is monetary, is that if we
17 have this heard at the June 4th hearing, that's another
18 month's worth of rent that in the event that we are unable to
19 sell these that the estate would be left holding the burden
20 of.

21 THE COURT: Well, I guess --

22 (Pause)

23 MR. KINNEY: I'm sorry, Your Honor.

24 THE COURT: No, take a minute, please. I would
25 much rather the parties work this out.

1 (Pause)

2 THE COURT: Would it be helpful if I left? No, I
3 mean --

4 (Laughter)

5 COUNSEL: Your Honor, I think we should keep the
6 momentum going.

7 THE COURT: Okay.

8 COUNSEL: Thank you, Your Honor.

9 MR. ROSSOW: Your Honor, this is Jim Rossow on
10 Zoom. I'm sorry for interrupting. Can the Court hear me?

11 THE COURT: Yes, I can, Mr. Rossow.

12 MR. ROSSOW: Thank you. Your Honor, I'm from
13 Rubin & Levin in Indianapolis, and I represent ALDI Inc.

14 And just to provide a little bit more context to
15 debtors' counsel in terms of the timing issues, one thing I
16 would point out is that ALDI is a successful bidder with
17 respect to two owned properties and one leased property, it's
18 all under one APA. And so while the landlords may consider
19 this sort of separate, from the -- from ALDI's perspective,
20 we have one APA that deals with three transactions. And as
21 counsel, debtors' counsel indicated, of course delay is an
22 issue because the cure costs might not necessarily be borne
23 by the debtor, it might be the assignee.

24 And so I certainly understand the valid concerns
25 raised by landlords, I know -- I personally don't see a

1 problem if the Court is reserving specific adequate assurance
2 issues. I am optimistic that, for example, ALDI, that any
3 such issues would be resolved without having to have the
4 Court actually take evidence and have a contested hearing.

5 So while I understand the need for other landlords
6 to be protected, in our circumstance, if possible, we'd like
7 to press forward. And to the extent the landlord in our
8 case, if they come forward, we'll be happy to address that,
9 but we don't want any additional delays in terms of being
10 able to close this, to keep sight of the economics of the
11 case.

12 THE COURT: Okay. Thank you, Mr. Rossow.

13 MS. MERSKY: Your Honor, Rachel Mersky. I can't
14 seem to get my video operating. I think --

15 THE COURT: We can hear you, Ms. Mersky.

16 MS. MERSKY: I'm just -- I'm representing Kimco
17 Realty in connection with a Houston, Texas lease, Number
18 2802. That lease was part of a rejection, but the landlord
19 has worked with the debtor consensually, as well as with the
20 proposed assignee, Burlington, and I note that we need that
21 Burlington property to be included in an order, I don't
22 think, as of right now, it is. There may be a little
23 confusion because this was added and was not part of the
24 auction, but we want to clarify that Kimco consents to the
25 addition of its lease and the withdrawal of the rejection.

1 MR. KINNEY: Your Honor, for this, because it was
2 not part of the auctioned assets, we would propose to file --
3 we'll file a separate notice of assignment and assumption
4 with respect to that lease.

5 THE COURT: Okay. Ms. Mersky, did you hear that?

6 MS. MERSKY: Yes, thank you. No problem, I just
7 wanted to make sure it didn't get overlooked in the larger
8 picture.

9 THE COURT: Contact Mr. Kinney if you don't see
10 it.

11 MS. MERSKY: Okay. Thank you, Your Honor.

12 THE COURT: Okay. So did you have an opportunity
13 to confer and perhaps handle -- determine how to handle this?

14 MR. KINNEY: Yes. Your Honor, the issue for the
15 estate remains the need to have resolution prior to June 1st.
16 We are agreeable to carving out Ms. Roglen's client.

17 THE COURT: Okay. I mean, she is the sole
18 objector here today who is not pressing to go -- who is
19 disputing going forward. And I am sympathetic to the
20 concerns raised by ALDI's counsel and others.

21 MR. KINNEY: So, Your Honor, we will carve her
22 client out of the proposed order. We will, for the avoidance
23 of doubt, add that paragraph anyway --

24 THE COURT: I was going to say, yes, please.

25 MR. KINNEY: -- just to clarify exactly what is

1 and what is not happening, that everything is subject to the
2 resolution of any adequate assurance objection that is in
3 fact filed.

4 THE COURT: Yeah, you certainly want to avoid a
5 future Mr. Kinney issue.

6 MR. KINNEY: Exactly.

7 THE COURT: Let me ask, did anyone else wish to be
8 heard with respect to the sale or the proposed form of order?

9 (No verbal response)

10 THE COURT: So I had comments on your order, but
11 then this morning you filed another order, which could I just
12 have a minute to look at?

13 MR. KINNEY: Certainly, Your Honor.

14 THE COURT: And whose comments are reflected on
15 this blackline? These are partly landlord?

16 MR. KINNEY: This is partly -- informal comments
17 we received from Ms. Roglen, as well as certain clean-up
18 changes from some of the purchasers as well.

19 THE COURT: I see, and updated to reflect filings.
20 Okay.

21 MR. KINNEY: And, Your Honor, I'm also informed
22 that the UCC's comments are also reflected in this -- in the
23 redline.

24 (Pause)

25 THE COURT: Okay, I'm going to ask -- these are

1 kind of very similar comments because these are all very
2 similar orders --

3 MR. KINNEY: Yes.

4 THE COURT: -- but, in (e), I'm going to ask you
5 strike the "non-appealable."

6 MR. KINNEY: Yes.

7 THE COURT: When is the adequate assurance
8 deadline, next -- the 30th?

9 MR. KINNEY: Next Thursday, yes, the 30th, Your
10 Honor.

11 THE COURT: Okay.

12 (Pause)

13 THE COURT: In this order, I don't know that this
14 is an issue, but take a look at (q) and (w) for similarity or
15 repetition. They may be -- in 4, you'll address the two
16 comments that we talked about previously.

17 MR. KINNEY: Yes, Your Honor.

18 THE COURT: I appreciate the modifications to 7.

19 (Pause)

20 THE COURT: Paragraph 13, general assignment,
21 again, change "directed" to "authorized."

22 And I think -- let me just double check -- take a
23 look at paragraph 18, direction to released interest, and I
24 think the end of that paragraph, starting at the bottom of
25 page 25 of the blackline, "each and every federal, state, and

1 local," do you see that?

2 MR. KINNEY: Yes.

3 THE COURT: I think that is duplicative of the
4 prior paragraph -- not the prior to this, but --

5 MR. KINNEY: Correct.

6 THE COURT: -- formerly paragraph 12, I don't know
7 what it is --

8 MR. KINNEY: Correct, Your Honor, 12 is now 13.

9 THE COURT: Yeah.

10 MR. KINNEY: Yes. So we'll strike it from the end
11 of --

12 THE COURT: Yeah, whatever -- I'm sure by the time
13 you make changes, I don't know what's going to happen, but
14 those are my comments.

15 MR. KINNEY: Thank you, Your Honor.

16 THE COURT: So and then, obviously, you'll address
17 the issues that were raised on the record today.

18 And let me just note, I'm just going to
19 incorporate my comments from earlier based on the Shin
20 declaration with respect to this sale as well.

21 MR. KINNEY: Your Honor, the one question that Ms.
22 Doyle (indiscernible) wanted me to ask you --

23 THE COURT: She made you ask, yes.

24 MR. KINNEY: -- is whether or not there's a time
25 by which you need the revised form of order.

1 THE COURT: I was going to tell you. So I have
2 limited staff tomorrow, and so is there a possibility that
3 you guys can get them to us by like 1:00?

4 MR. KINNEY: By 1:00? Certainly, Your Honor.

5 THE COURT: And in fact I have some people who are
6 already off for holiday, so please let us know if there's a
7 reason you can't.

8 MR. KINNEY: Your Honor, we'll endeavor to get
9 drafts turned immediately after the hearing.

10 THE COURT: Okay. Was there one other matter for
11 today --

12 MR. KINNEY: There is, Your Honor.

13 THE COURT: -- a Suri objection?

14 MR. KINNEY: Yes, Your Honor.

15 (Pause)

16 MR. KINNEY: So the rejection is going forward
17 with respect to Docket -- the objection of Suri Westover
18 Village, Inc., which was at Docket Number 324, their
19 objection.

20 THE COURT: Is anyone here today on behalf of Suri
21 Westover Village?

22 MR. SURI: I am here, ma'am.

23 THE COURT: Okay. You filed -- excuse me, sir --
24 you filed an objection and I wanted to give you an
25 opportunity to address that.

1 MR. SURI: Yes, thank you for your time. Yeah, I
2 mean, our main kind of issue is that, you know, rejecting
3 that is because we have quite a bit of financial pressure,
4 and this lease and this, you know, tenant was a significant
5 part of the shopping center, it was an anchor tenant when it
6 was first built and stuff, and their significant, I guess,
7 contribution to the financing and the thing of the operation.

8 THE COURT: Sir, do you have anything further?
9 And, I'm sorry, did you state your name for the record?

10 MR. SURI: My name is Parkash Suri.

11 THE COURT: Okay.

12 MR. SURI: I'm one of the owners.

13 THE COURT: Okay, all right. Thank you
14 Was there anything further, Mr. Suri?

15 (No verbal response)

16 THE COURT: Okay.

17 MR. SURI: No, that's it.

18 THE COURT: I don't want to cut you off, sir.
19 Please feel free --

20 MR. SURI: No, that's about it. Yeah, it's just
21 the financial pressure.

22 THE COURT: Okay. Well, I'm going to let the
23 debtors respond to your objection, and then I'll rule.

24 MR. KINNEY: Thank you, Your Honor, Brian Kinney
25 of Milbank on behalf of the company.

1 Your Honor, the location at issue here is a
2 location that the debtors closed as part of their initial
3 wave of store closings in April. The debtors' estates are
4 receiving no benefit from this location at this point. The
5 debtors have returned the keys and codes to the landlord, and
6 are no longer in occupancy of the location. As such, under
7 360 -- excuse me, Section 365 of the Bankruptcy Code, the
8 debtors, in their reasonable business judgment, decided to
9 reject this location. While it is unfortunate that the
10 shopping center's cash flows are going to be negatively
11 impacted by this rejection, however, the estate simply cannot
12 afford to carry the costs for a closed location when it's
13 receiving no benefits from that location.

14 THE COURT: Mr. Suri, do you agree the debtors are
15 not in that location anymore?

16 MR. SURI: Yeah, they're no longer there, yes.

17 THE COURT: And you have access to the premise?

18 MR. SURI: I do, yes.

19 THE COURT: Okay. Do you wish to be heard any
20 more on your objection?

21 MR. SURI: I would.

22 THE COURT: Okay.

23 MR. SURI: I'm happy to, you know -- I know
24 there's a June 4th matter, if we could be -- then I could
25 have my lawyer. I just kind of presented this at a very

1 short period of time. I would appreciate that, if that's
2 possible.

3 MR. KINNEY: Your Honor, we're happy -- if Your
4 Honor wishes to continue, we could; however, again, we do not
5 believe that there is any basis to object -- that there is no
6 valid objection to the rejection at this location.

7 THE COURT: Yeah, Mr. Suri, I'm very sympathetic
8 to your position and I appreciate you participating in the
9 process; however, there is no basis in law to support your
10 objection. The debtors, in their business judgment, have
11 determined to reject and they're entitled to do so, and have
12 noted there's no benefit to the bankruptcy estate here.

13 So, sir, I'm inclined to overrule your objection
14 for those reasons, and I would not be inclined to continue
15 this to another hearing.

16 MR. SURI: If you're not inclined to, I guess so,
17 then I --

18 MR. KINNEY: And, Your Honor, can I just note one
19 thing for the record?

20 THE COURT: Yes.

21 MR. KINNEY: Pursuant to the Bankruptcy Code, upon
22 the rejection, the landlord will have a claim for damages.
23 We have filed our bar date motion, so we expect to have a bar
24 date set in the near future. The landlord will be mailed
25 notice of that bar date and is free to file a proof of claim

1 setting forth his damages from the rejection.

2 THE COURT: Did you hear that, Mr. Suri?

3 MR. SURI: I did, ma'am. Thank you.

4 THE COURT: Yes, so that a remedy available to
5 you.

6 MR. SURI: Okay.

7 THE COURT: Okay? All right.

8 MR. SURI: Yes, thank you.

9 THE COURT: Thank you very much for your patience
10 today.

11 MR. SURI: Yes.

12 MR. LEBLANC: Your Honor, Andrew Leblanc again.

13 Your Honor, I think that concludes our agenda for today.

14 I did want to mention, Your Honor, we had the
15 occasion to bring a number of our summer associates who just
16 -- this is actually their first day of working at the firm.

17 THE COURT: Oh --

18 MR. LEBLANC: They've been with us --

19 THE COURT: -- it's summer.

20 MR. LEBLANC: -- for three days -- it is --
21 they've been with us for three days for orientation, but
22 started today, so a number of them came down here. And we
23 appreciate Your Honor's time and it was good that they got to
24 see a hearing start to finish, and also to see the allure of
25 Bankruptcy Court that you can actually have something start,

1 finish, and conclude all in the course of a handful of hours.

2 So we thank you very much, Your Honor, for your
3 time and for your consideration of the matters before you.

4 THE COURT: Certainly. And let me, just before we
5 go, I want to make a couple of points.

6 One, I need a rejection order. And I'll note that
7 the Court asks that you contain in the rejection orders the
8 language about consenting third parties when it includes
9 abandonment.

10 And I welcome the summer clerks, I hope you have a
11 great experience, and you're always welcome to come view
12 things in this court. And I hope you also got to experience
13 a bit of the auction, if at all possible.

14 But I'd also like to congratulate the debtors on a
15 successful auction. I know -- I can appreciate the
16 incredible amount of time and attention required to conduct
17 that auction, and to analyze the multiple sale transactions.
18 And so I just want to note, I appreciate that you were
19 drinking from a fire hose when you were submitting orders and
20 agendas and all up until the hearing, so my congratulations
21 to you.

22 And I appreciate the committee and lenders and the
23 landlords and everyone's participation, that's what makes
24 this process so special.

25 And thank you to Ms. Rosa Sierra-Fox for helping

1 us keep our orders in form. I appreciate everybody's time.

2 I hope you all have a great day. We'll look
3 forward to receiving your orders tomorrow, and hopefully I
4 won't see any of you and that you have a good holiday, and
5 I'll see you on June 4th.

6 COUNSEL: Thank you, Your Honor.

7 THE COURT: We stand adjourned.

8 (Proceedings concluded at 2:57 p.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling May 24, 2024

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams May 24, 2024

Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajackowski May 24, 2024

Mary Zajackowski, CET-531
Certified Court Transcriptionist
For Reliable